Supreme Court, U.S.
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No. 93-235

In The

Supreme Court of the United States

October Term, 1993

In Re:

DANIEL R. HODGE, M.D., J.D.,
Petitioner,

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS / PROHIBITION

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July 30, 1993

QUESTIONS PRESENTED

1. Whether an Act of Congress, and specifically in this case, the Family Support Act of 1988, P.L. 100-485, 42 U.S.C. § 667, has original jurisdiction in District Court, and is therefore removable pursuant to 28 U.S.C. § 1446 (b) and (e), and entitled to a jury trial on the merits?

2. Whether the District Court has jurisdiction to declare the rights and relationships of parties involved in domestic relations matters, such as the temporary relinquishment of custody in visitation, and of support, and the distribution of marital property - as an asset directly related to a P. L. 100-485 child support determination - in a vacated portion of a Judgment of Divorce?

3. Whether the District Court has jurisdiction over a case in controversy, directly connected to the Family Support Act of 1988, P. L. 100-485, 42 U.S.C. § 667, of income, assets and child support - to declare a State Court order to be in flagrant violation of the Eight, Thirteenth and Fourteenth Amendment of the Constitution of the United States of America - for precluding the gainful, lawful practice of medicine in compelling a Black physician, or any citizen who committed no crime, to undergo - as term of probation staying a suspension of a medical license - a program of involuntary servitude in a psychiatric counselling program, even upon passing a psychiatric examination and being found fit to practice medicine?

4. Whether documentary indictments must be handed up and documentary convictions for the civil rights crimes of conspiracy, false arrest and unlawful incarceration of an innocent citizen must be effected against several federal and state judicial officers?

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In The
Supreme Court of the United States

October Term, 1993

In the Matter of

DANIEL R. HODGE, M.D., J.D.,
Petitioner,

vs.

Thomas J. Meskill, Ch. J., 2nd Cir., John M. Walker, C. J., 2nd Cir., Constance Baker Motley, Sr., U.S.D.J., SDNY., Richard J. Arcara, U.S.D.J., WDNY., John T. Elfvin, Sr. U.S.D.J., WDNY., John T. Curtin, Sr. U.S.D.J., WDNY., David G. Larimer, U.S.D.J., WDNY., William M. Skretny, U.S.D.J., WDNY., Michael A. Telesca, Chf. U.S.D.J., WDNY., Edmund F. Maxwell, U.S.M.J., WDNY., James H. Dillon, Fam.Ct.J., Erie Cnty, N.Y., Sharon S. Townsend, Fam.Ct.J., Erie Cnty, N.Y., Majorie C. Mix, Fam.Ct.J., Erie Cnty, N.Y., Anthony P. LoRusso, Fam.Ct.J., Erie Cnty, N.Y., John F. O'Donnell, Fam.Ct.J., Erie Cnty, N.Y., Sol Wachtler, Ex-Chf J., NYS Ct. of App., Monica J. Applewhite, M.D., Paul K. Isaac, Esq., Richard Bernhard, Esq.,
Respondents.

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS / PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that an **Extraordinary Writ of Mandamus** be issued to the United States Court of Appeals for the Second Circuit and the United States District Court for the Western District of New York, to (1) compel the **"just and appropriate"** application and enforcement of the **Family Support Act of 1988**, congressional enactment, **P. L. 100-485, 42 U.S.C. § 667**, and provide for a jury trial on the merits, to make a ministerial determination of the Petitioner's child support obligation, and assets in an undistributed marital property, in the medical license and practice of an ex-spouse, Defendant Monica J. Applewhite, M.D., who moved on January 5, 1987, in the New York State Supreme Court of Erie County, to vacate **(AP 71-72)**,[1] a 1984 **Judgment of Divorce,** in so far as it relates to such marital property.

Petitioner prays that an **Extraordinary Writ of Mandamus** be also issued to the United States Court of Appeals for the Second Circuit and the United States District Court for the Western District of New York, to (2) compel provision of a jury's ministerial assessment of damages to the Petitioner, after an Order dismissing the custodial parent's malicious prosecutions, of several years duration, seeking the **"termination of Petitioner's parental rights,"** and to compel the temporary relinquishment of custody of two children to effect proper visitation with Petitioner, their biological father, during time-frames that are carved in a May 23, 1989 ***Order of Visitation***, but being violated with impunity by the custodial parent, with the full blessing, and instigation even, of the New York State Erie County Family Court.

Petitioner prays that an **Extraordinary Writ of Prohibition** be issued to the United States Court of Appeals for the Second Circuit and the United States District Court for the Western District of New York, to (3) prohibit the repeated incarcerations and re-incarcerations ad nauseam of the Petitioner, (who would die rather than capitulate to the forces - on or before the bench and bar - of northern liberal, ethnocentric white racism, corruption and criminality) by the use of a fraudulent New York State Erie County Family Court ***Order of Support*** and ***Order of Commitment,*** or the collection of a fraudulent New York State Erie County Family Court **Money Judgment,** and to (4) prohibit the entry of Sheriffs or other law enforcement officials, into Petitioner's home without a warrant, in violation of the **Fourth**

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[1] **"AP"** denotes the appendix attached to this Petition, however, references to AP in some of the documents in the attached appendix relate to proof that is attached to those documents but not included in this Petition, nor are they really needed for the understanding of this Court in this application.

Amendment of the United States Constitution, purportedly to seize personal computers, legal files and work products, papers and effects, and law books, **"from which this [fraudulent] judgment may be partially satisfied,"** according to the **"forensic"** machinations of Defendant Paul K. Isaac, Esq., pro se, and counsel for an ex-spouse of the Petitioner.

OPINIONS BELOW

The Summary Order, Docket No. 93-3031, of the United States Court of Appeals for the Second Circuit, filed May 4, 1993, denying mandamus, is unpublished, and is reprinted in the Appendix to this Petition, **(AP 2)**, infra; the June 1, 1993 Judgment, (AP 1) Docket No. 92-CV-835 A; the May 24, 1993 Decision and Order (AP 3-6) 92-CV-835 A, denying a motion for disqualification and dismissing the action; the May 13, 1993, "affirmation of the December 24, 1992 Order of Remand" (AP 7-11) Docket No. 92-CV-794 A; and the March 29, 1993, Report and Recommendation of the United States Magistrate Judge (AP 12-31) Docket No. 92-CV-835 A, of the United States District Court for the Western District of New York, are unreported.

JURISDICTION

The Judgment of the Court of Appeals in ***Daniel R. Hodge, M.D, J.D., vs. Richard J. Arcara, et al.***, (AP 2) was filed on May 4, 1993. This Court has jurisdiction to review that Judgment under 28 U.S.C. § 1651 (a), and Rule 20.3 of this Court.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Are all set forth in pertinent part beginning at (AP 76-82)

STATEMENT OF THE CASE

Petitioner, Daniel R. Hodge, M.D., J.D., is a 49-year-old Black citizen. This Court is very well aware, that Petitioner in seeking refuge from the adversity suffered at the hands of State and Federal judicial officers, officials, agents, employees and private individuals, has climbed to this Court on five occasions[2] in the past four years:

Two Petitions for certiorari to the State of New York, Court of Appeals, relating to the pseudo-scientific and fraudulent suspension of Petitioner's medical license and to the unlawful withholding of Petitioner's law degree - a deprivation of Petitioner's law degree for so extended a period or under such circumstances that the major portion of its economic value or benefit was lost. Those are matters that were before Defendant New York State Court of Appeals Chief Judge Wachtler in 1991;

Two Petitions, one in 1989 and another in 1991, for certiorari to the United States Court of Appeals for the Second Circuit, relating respectively to an action for unlawful racial discrimination during Petitioner's employment as a clinical physician at Attica Prison - with a retaliatory, under color of law discharge, and conspiracy with the New York Department of Health that ultimately resulted in the suspension of Petitioner's license to practice medicine. The other petition concerned the refusal of a hospital administrator and two other physicians to grant Petitioner employment as a locum tenens, independent emergency room physician, even merely one day after the hospital board had renewed Petitioner's hospital privileges.

While battling the forces of race hate and professional jealousy to salvage and retrieve a medical license and procure a law degree - with the resulting complete destruction of Petitioner's earning power - Petitioner, was simultaneously further brutalized in the grips of a corrupt New York State, Erie County Family Court scheme of malicious prosecution for more than three years, from August 21, 1989 to January 28, 1993, purportedly for violation of an un-modifiable, implacable ***Order of Support.***

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[2] ***Hodge vs. Kelly et al.,*** 86 Civ. 160 C (W.D.N.Y. July 8, 1988) (Curtin, J.), aff'd 868 F. 2d 1267 (2d Cir. 1988) cert. den. 490 U.S. 1081, 104 L. Ed 2d 663 (1989); ***Hodge vs. New York State Department of Education, et al.,*** 112 S.Ct. 408 (1991); ***In Re: Daniel R. Hodge, M.D., J.D.,***112 S. Ct 376 (1991) ***Hodge vs. Lake Shore Hospital et al.,*** 87 Civ. 566 C (W.D.N.Y. Feb 4, 1988) (Curtin, J.) 112 S. Ct 417 (1991); ***Applewhite vs. Hodge,*** application for stay to an individual Justice, denied by Mr Justice KENNEDY, October 2, 1991. It is the instant case that has resulted in Petitioner's unlawful incarceration and the commission of civil rights crimes on the federal and state benches.

Petitioner was then falsely arrested in the court room, and pursuant to a fraudulent ***Order of Commitment,*** illegally imprisoned for 78 days, of a four month term, in the Erie County Correctional Facility, Alden, N.Y.

The pertinent chronological sequence of events in this case have been recounted several time in a myriad ways, but the skeletal structure critical to the understanding of the Court in substantiation of relief being sought are as follows:

In 1985 Petitioner, while working as a clinician at Attica Prison, in the County of Wyoming, in Western New York State, applied to and was accepted at the State University of New York at Buffalo Law School. There were, as a practical matter, three fungible medical primary care clinics in place at the Attica Prison: from 9:00 am to 11:00, from 1:00 pm to 3:00 pm, and from 7:00 pm to 9:00 pm. For a full two years before Law School attendance, Petitioner's professional evaluations were excellent, and Petitioner voluntarily taught nurses and physician's assistants, and there was an atmosphere of congeniality, in fact, collegiality.

But after Petitioner's commencement of Law School, things considerably changed, and there was obvious professional jealousy, some coming from the most unexpected sources and a few genuinely warned that there was a scheme in the works to torpedo Petitioner's prospective medico-legal career. Although, professionals punch no clocks, checks were instituted at the gate to time **"lateness"** and document **"early departures,"** and use of the copy machine for law school work, when in fact, copies were made for teaching nurses and physician's assistants, and even in cases related to the State of New York's defense in a malpractice suit.

Petitioner was asked by a New York Assistant Attorney General in New York City for assistance in the case, and the State of New York, Department of Correctional Services even paid for Petitioner's trip to New York City in connection with the case, yet marked Petitioner as being more than two hours late and docked - because the flight was delayed in arriving in Buffalo. Such was the nature of the harassment, in which the local

Attorney General's Office actively participated, squarely aligning with the Attica Prison local management and their executive directors in Albany.

The harassment became very intense, to the point of actually **"docking"** Petitioner's pay for **"lateness"** the only person so treated of the 1000 employees at the prison, according to the time keeper in testimony during the second of two arbitration hearings. Ultimately, there was the abrupt creation of a fourth never-before-never-since seen clinic from 10:00 am to 4:00 pm, specifically concocted so as to prevent Law School attendance either in the morning or afternoon session, and having no connection whatsoever to any legitimate health care objective at Attica Prison, to be sure.

A civil rights suit ensued, the United States District Judge, Defendant John T. Curtin, touting himself as a super-liberal before members of the Minority Bar, as keynote speaker, and a Mr. Desegregation of the Buffalo police force and schools, denied an injunction some five months after an application was made, under the famous no irreparable harm, and find employment elsewhere and still attend Law School directive.

United States District Judge, John T. Curtin, as "civil rights judge" refused to order the compliance with the provisions of a most mundane work contract, providing for **"great flexibility in how and when a physician can render services to the New York State Department of Correctional Services."** It's all in the ***Hodge vs. Kelly*** controversy now in the certiorari graveyard.

Even in 1987, it was well known by physician's that the prison population had a far higher incidence of AIDS than the general population, and Emergency Room physicians particularly, were very concerned about the prospect of being infected as an occupational hazard by blood and other body fluids. Attica Prison had no system of emergency care on site: no defibrillator, no policy for personal protection, such as the wearing gloves, or masks, or goggles, or gowns, or policy regarding emergency utilization of even the most rudimentary medicines, assembled in a fashion commonly used in hospitals, and readily dispensable.

On March 2, 1987, Petitioner made a well-informed, clinical judgment not to proceed, in an inchoate attempt, with what was - to an independent professional - clearly and obviously, a futile and potentially perilous **"rescue mission"** of resuscitating an inmate, a Patient C, in the **statement of charges**, who suffered a cardiac dysrhythmia and disorder - including several possible combinations and permutations of rhythms, either ventricular fibrillation (a uselessly quivering heart almost always fatal) or tachycardia (a very rapid heart beat) or bradycardia (a very slow heart beat) or asystole (no beat).

The prison medical health care staff was neither trained, equipped nor protected - refusing to even follow Petitioner's reasonable command that they, at the very least, wear gloves, let alone, masks and goggles - as are required by **Center for Disease (CDC)** guidelines for **Human Immunodeficiency Virus (HIV)** infection control. The medical establishment, for years, has been under and has caved in to pressure, and partly of it own making, in giving the public an unjustifiably high expectation of its capabilities and not its limitation, had at least given the appearance that every life in jeopardy should be saved at any cost, no matter how scientifically unjustifiable or inappropriate or risky to the rescuer. It is absolutely unrealistic, in fact, hazardous, particularly in today's AIDS epidemic.

But even before AIDS was prominently on the scene, in the more realistic minds of many in the field of emergency medicine, there was an equilibrium reached between technology and ethics, anticipated benefit and potential risks, realistic achievements and false expectations. Recently, the policy regarding the administration of CPR was made to conform to the more appropriate, scientifically justifiable procedure: Step #1, call 911, because the earlier a terminally fibrillating heart is defibrillated, the higher is the likelihood of returning it to a normal rhythm. The **standard of care** expected to be delivered to a terminally fibrillating patient, where CPR has been shown to be of little or no benefit, is dependent on several factors, because,

> **"[a]s we have seen, there is potential harm in CPR in that patients may be kept alive for days to weeks undergoing painful and dehumanizing procedures with no conceivable medical benefits."** Blackhall, **Must We Always Use CPR? 317**

New England Journal of Medicine pp. 1281-1284 (1987)

There comes a time when the patient's or relative's or the administrator's or the employer's wishes, or the public's expectations become irrelevant.

"The issue of patient autonomy is irrelevant, however, when CPR has no potential benefit. Here, the physician's duty to provide responsible medical care precludes CPR, either as a routine process in the absence of a decision by a patient or as a response to a patient's misguided request for such treatment in the absence of adequate information. In such cases it is not the physician's responsibility to offer CPR. Both physicians and patients must come to terms with the inability of medicine to postpone death indefinitely." Ibid.

Prison authorities, nevertheless, distorted the Petitioner's medical judgment-call properly made under the facts and circumstances of that rescue situation, and seized the upon that opportunity to place Petitioner on administrative leave, with pay, on March 16, 1987 - **"pending an investigation of the inmates death."** It was really in retaliation for their having been sued for blatant racial discrimination by the Petitioner, in ***Hodge vs. Kelly et al.***

The New York State Department of Health's, Office of Professional Medical Conduct (OPMC), was **"called in"** to **"investigate"** the alleged **"medical misconduct"** in a conspiracy orchestrated in concert with the New York State Departments of Correctional Services, Department of Law and several hospitals, namely, Lake Shore Hospital, in Silver Creek, N.Y., Tri-County Memorial Hospital, in Gowanda, N.Y., and Columbus Hospital of Buffalo, N.Y. The New York State Department of Health's, Office of Professional Medical Conduct (OPMC), concocted twenty (20) **"medical misconduct"** charges placed against the Petitioner, in a so-called **Statement of Charges,** having no scientific or clinical validity whatsoever.

Just to illustrate the calibre of the degrading scheme and the level of clinical acumen of the so-called Hearing Committee, there was alleged in the **Report of the Hearing Committee,** that the Petitioner was **"negligent and incompetent"** for not administering a **"precordial thump"** to the terminally fibrillating inmate at Attica Prison. The Hearing Committee thought that such a procedure was required to be administered - because it so states in the protocol - just routinely, but not reading the fine print which states that a precordial thump is to be done ***only*** on a patient ***actually hooked-up*** to a cardiac monitor at the time of cardiac standstill. There was, at Attica Prison, no monitor, or defibrillator or masks or goggles or a stylet used to assist in intubating a patient. Petitioner's decision still stands, and in fact, is more correct as time passes.

The charge was absolutely absurd and the result of ill-education and amateurish bundles of misinformation. akin to a child coming home and asking,**"Who is Richard Stands?"** The befuddled parent admits not knowing that famous man, that the child regularly mentions in the pledge of allegiance: **"I pledge allegiance to the flag of the United States of America and to the Republic for which it stands . . ."** (Richard Stands). The Hearing Committee characterized a blood gas assay, showing an excess of oxygen in the blood as, **"Patient P's blood gas analysis indicated that respiratory insufficiency had been present for some time."** The actual result is placed here so that this Court can at some point casually request that a pulmonologist or even a respiratory physiologist confirm hyperventilation and by no means respiratory insufficiency: pH 7.434, pCO_2 24.5, pO_2 101.9, HCO_3 16.5

There was also a so-called **Investigative Hearing**, having the sole purpose of degrading the Petitioner and where,

> **"The sole issues to be addressed at the investigative proceeding are whether the committee, based on the information adduced at the hearing has reason to believe that you may be impaired by mental disability and, therefore, whether it should issue an order directing that you submit to a complete psychiatric examination."**

The psychiatric examination performed by the New York State selected psychiatrist, which included a psychological report composed after several hours of testing, revealed that in addition to, **"A Verbal IQ of 123 could be calculated, which corresponds to the Superior range of intelligence,"** that,

> **"In summary, the examination reveals Dr. Hodge to be a man of good intellectual ability whose potential probably falls in the Superior range of intelligence, but who may not always function at that high level."**

And the low levels were reached during those times that Petitioner told the northern liberal, jealous, racist fools in the pseudo-aristocracy to go to Hades. So, to be sure, the Petitioner was not going to get out of that purported "Investigative Hearing," without having been diagnosed with a mental disorder or two, and most expectedly at least one was invented,

"There are minimal indications of major emotional disturbance apparent in his test record, and the degree of behavioral discontrol apparent on clinical interview is surprisingly not reflected in his test performance, where he showed some emotional lability but no deterioration of defenses and no breakdowns of reality testing. This generally intact level of personality integration together with the striking qualities apparent upon clinical interview, would suggest the absence of Axis I pathology, but would strongly point toward the possibility of a personality disorder, most likely of a narcissistic type."

The so-called Hearing Committee voted unanimously to revoke Petitioner's medical license, and the erstwhile New York State Department of Health's Commissioner, David Axelrod, M.D., affirmed the revocation. The so-called New York State Department of Education, Regents Review Committee consisting of two retired judges and a lawyer, voted instead to suspend Petitioner's license, and ordered psychiatric examinations every six months and perennial psychiatric counselling, for 36 months.

New York State Department of Education, Board of Regents, whose only physician member, the late Gerald J. Lustig, M.D., completely dissented, voted on April 27, 1990, to suspend Petitioner's license for 36 months, staying the last 33 months conditional upon various term of probation. The term 1 f, most cogent to the relief being sought in this petition, prescribed,

"That respondent shall, at respondent's expense, enroll and participate in a counselling program during the period of probation, said counselling program to be selected and previously approved, in writing, by the Director of the Office of Professional Medical Conduct; proof of the satisfactory completion of said counselling program to be submitted, in writing, to said Director of the Office of Professional Medical Conduct within 10 days after such successful completion. Respondent shall undertake said counselling program even if he passes the psychiatric examination required in probation term 1b."

At no time during the thirty three months (33) supposed stay of suspension, was there, **"selected and previously approved, in writing,"** any counselling program - to correct God only knows what - by the Director of the Office of Professional Medical Conduct, which could not be designed even after consultation with several psychiatrists, she admitted in open court at the so-called **"contempt & commitment"** New York State Erie County Family Court Proceeding.

The Director of the Office of Professional Medical Conduct neither complied with her burden under that probation term nor did she move in court to vacate that term, nor did she even inform this Petitioner in writing that she could not comply, and as a matter of law, Petitioner was precluded for three years from the lawful practice of medicine. Moreover, Defendant State of New York, Court of Appeals Chief Judge, Sol Wachtler, affirmed that manifestly unlawful order of the New York State Commissioner of Education, and this Court denied certiorari, which the world interprets as being a decision on the merits - no matter what is said to the contrary.

Petitioner being unable to at any point secure justice, was unlawfully incarcerated for 78 days, of a four month term, for so-called **"contempt of court"** for not paying an unlawful money judgment of $16,500, when in fact, according to New York State, Domestic Relations Law § 236, Pt. B (1)(c) and (5)(d)(6), Petitioner has an equitable claim to an as yet undistributed award of marital property conservatively valued at $1.6 million.

REASONS FOR GRANTING THE EXTRAORDINARY WRIT OF MANDAMUS / PROHIBITION

POINT I: An Act Of Congress, And Specifically In This Case, The Family Support Act Of 1988, P. L. 100-485, 42 U.S.C. § 667, Has Original Jurisdiction In District Court, And Is Therefore Removable Pursuant To 28 U.S.C. § 1446 (b) And (e), And Entitled To A Jury Trial On The Merit.

Inquiring whether a District Court has jurisdiction over an Act of Congress is akin to asking - like the childhood query - who is buried in Grant's tomb? Nevertheless, the Defendant United

States Magistrate declared in his so-called Report and Recommendation that,

> **"Dr. Hodge's basis for original jurisdiction in this court appears to be the Family Support Act of 1988, P. L. 100-485, incorporated throughout 42 U.S.C. Dr. Hodge argues that the Act requires the States to establish guidelines for child support. And he argues, because the Erie County Family Court misapplied New York law in modifying his support upward, this court should now make an independent determination of his child support obligations.**
>
> **This is utterly specious. As noted above, this court has no jurisdiction to entertain suits addressing domestic relations. There is nothing in the Family Support Act to change that jurisdictional limitation. The actions of which Dr. Hodge complains are the state court's application of state law. A federal court does not sit to tell state courts that they misapplied state law."**

The only specious phenomenon here is that the Defendant United States Magistrate Judge Edmund F. Maxwell, making those criminally false pronouncements, after being involved in the civil rights crime of unlawfully incarcerating an innocent citizen, is still allowed to remain on bench.

There has yet to be a lawful determination of Petitioner's lawful basic child support obligation, to this very day, for the past four years, since August 21, 1989, when an ex-spouse of the Petitioner filed a petition for enforcement of a July 20, 1988 ***Order of Support***, and since September 1, 1989, when Petitioner cross-petitioned for a downward modification, pursuant to the **1989 Child Support Standards Act**, the grantee New York State enactment mandated by the **1988 Family Support Act, P. L. 100-485, 42 U.S.C. § 667. (AP 79-80)**

The Defendant New York State Erie County Family Court Hearing Examiner, now a Judge, Marjorie C. Mix on two occasions, on November 18, 1989 and on August 11, 1992, had absolutely refused to comply with several substantive provisions of the New York State and Congressional Child Support enactments, or to adhere to the most rudimentary procedural requirements relative to discovery and the presentation by the parties of mandatory financial data.[3] How could it be known whether there was a **"change in financial circumstance"** of either parent, if both parents are not required to comply with lawful disclosure? Defendant Erie County Family Court Hearing Examiner Marjorie C. Mix, in her August 5, 1992, so-called report, entered into the Office of the Clerk of the New York State Erie County Family Court on August 11, 1992, proclaimed that,

"The parties appeared on April 29, 1992 for a hearing and this Hearing Examiner *bifurcated the issues,* requiring the Petitioner to establish that his financial circumstances had changed since November 16, 1989, and that any change was substantial and material. Once that threshold question was met and if modification of the prior order was appropriate, the issue of how much support should be paid would be addressed."

In the so-called **"contempt & commitment"** enforcement proceeding before Defendant New York State Erie County Family Court Judge James H. Dillon, there was also refusal to comply with lawful disclosure or to even consider modification as **"relevant"** to the proceeding. Defendant Paul K. Isaac, Esq., counsel for the custodial parent, proclaimed in open court that,

"I just want to restate for the umpteenth time this matter is not litigation with regard to my client's income. The only issue

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[3] Family Court Act § 413 (1)(a), in pertinent part, provides that,

"[t]he parents of a child under the age of twenty one (21) years are chargeable with support of such child and, *if possessed of sufficient means or able to earn such means,* shall be required to pay for child support *a fair and reasonable sum* as the court may determine."

In the instant case it is wholly **"just and appropriate"** that the **Child Support Standards Act Factor # 7** be considered in justification of the resort to **poverty level protection,** because of the **"grossly disparate income differential,"** as is set forth here, that Petitioner Daniel Hodge's **Basic Child Support Obligation** be the statutory and largely symbolic amount of $ 25 per month, pursuant to Family Court Act § 413 (1)(d). The Non-Custodial Parent's (NCP) report of his Adjusted Gross Income (AGI) and the estimated AGI for the Custodial Parent (CP) for the years 1987-1992 are listed as follows:

Adjusted Gross Incomes of both Parents from 1987-1992

	1987	**1988**	**1989**	**1990**	**1991**	**1992**
NCP AGI	160,761	79,570	- 31,182	- 29,208	- 31,566	-22,133
CP AGI	60,000	78,172	139,235	150,000+	150,000+	150,000+

before this Court today are the sentencing upon Judge Mintz's decision of November 16th, 1989 holding Dr. Hodge to be in contempt, and also willful contempt since that time pursuant to my *Order to Show Cause* which was dated on the 18th day of June, 1991. Therefore, Your Honor, there is no calculation required as to my client's income. We have an Order in effect and it must be enforced."

The New York State Family Court Act § 455 (2) and (5), provide for modification of an ***Order of Support*** even during the "contempt & commitment" proceeding. Nevertheless, the Defendant New York State Erie Family Court Judge James H. Dillon declared in open court that,

"It [the Child Support Standards Act] makes no difference in this proceeding, it goes to the propriety of the underlying Court Order and this Court is not concerned with that. That was your appeal, which was dismissed. * * * Dr. Hodge, despite the fact that you with [sic] to re-litigate this Order, there's already an Order of this Court which is in effect and no one has moved in front of me to modify it. I have not received a Petition. It is indeed the law of the case. Whether you feel it's proper or improper is irrelevant. * * * You can put on a witness to clarify matters to which you have testified to. However, I will tell you right now that if you do proffer this witness for the purpose of modification or explanation of what your support obligation should have been, I will find that to be irrelevant. If you are putting him on to reflect as to the willful and intentional nature of the non-payment, that is highly relevant."

The statement obviously is devised with a built-in-guilt presumptuous substance, akin to the query of how many times did you beat your wife last night? The New York State Supreme, Appellate Division, Third Department made a most mundane but highly dispositive decision in a case (AP 62-64) entitled, ***Barbara J. Chariff vs. Clifford H. Carl,*** __ A.D. 2d __ (3d Dep't, March 4, 1993) holding, among other things, that,

"Child support is *not a one-sided obligation* placed upon a single parent," and that there must be, **"an evaluation of the means and responsibilities of both parents and the needs and best interest of the child,"**

There are logically, multiple variations of "just and appropriate" awards of child support, having determinations premised on the notion that,

"A *substantial* *improvement or deterioation* in the custodial or non-custodial parent's income and financial condition is, *in and of itself*, an independent ground sufficient to sustain an increase or decrease in the amount of child support that either such parents are required to pay."

At no time during the past four years, despite the precipitous drop in the Petitioner's income, and the several fold increase in the income of the custodial parent, has there been a **"just and appropriate"** determination of child support pursuant to **P. L. 100-485, 42 U.S.C. § 667.** The matter was jurisdictionally properly and timely removed to the United States District Court for the Western District of New York, pursuant to 28 U.S.C. §§ 1441, 1443, as the civil docket for case # 92-CV-794 (AP 83-84) and case # 92-CV-835 (AP 88), establish as a matter of fact and law. MANDAMUS MUST LIE! And a jury trial, which was demanded (AP 83;87) must be had on the merits.

POINT II: The District Court Has Jurisdiction To Declare The Rights And Relationships Of Parties Involved In Domestic Relations Matters, Such As The Temporary Relinquishment Of Custody In Visitation, And Of Support, And The Distribution Of Marital Property - As An Asset Directly Related To A P. L. 100-485 Child Support Determination - In A Vacated Portion Of A Judgment Of Divorce.

Two seminal cases, i.e., ***Hiram Barber vs. Hulda A. Barber***, 62 U.S. 226, 21 How., 582-605, 16 L. Ed. 226 (1859) and ***Ankenbrandt vs. Richards***, 112 S. Ct 2206 (1992), are being zealously used in justification and support of the notion that there is, in the instant case, an absolute lack of federal **"domestic relations"** jurisdiction, as that prosaic porridge was written by the United States District Judge, Defendant Richard J. Arcara, in his (AP 7-11) May 13, 1993, Decision and Order 92-CV-794 A, (item 14, AP 84) **"self-affirming"** the unlawful (AP 67-68) December 24, 1992 Decision and Order 92-CV-794 A, (item 3, AP 83) remanding the case to the New York State Erie County Family Court. The United States Magistrate Judge in his so-called (AP 53-61) **Report and Recommendation** (item 27, AP 89) joined in to purportedly bolster their dual contentions that there is an absolute United States District Court "hands off" policy to the whole subject of domestic relations.

The United States Magistrate Judge, Defendant Edmund F. Maxwell, declared (AP 57),

> **This court has absolutely no jurisdiction to adjudicate Dr. Hodge's complaints regarding child visitation, marital property or child support.**

The only **"absolute"** certitude in that misleading missive, is that the proclamation is absolutely false. The holding in ***Barber*** is indeed so directly cogent and dispositive of the instant petition which seeks an identical mandate. Mr. Justice WAYNE in delivering - the very last paragraph of - the opinion of the Court wrote,

> **"The complainant comes into court in the character of citizen of the State of New York. Mrs Barber is recognized to be such by the laws of that State, and her *status* as a divorced woman *a mensa et thoro* by a court of competent jurisdiction in New York, and the rights of citizenship which she has under it there, are decisive of her right to sue in the courts of the United States, as that has been done in this instance. The citizenship of the defendant is admitted and claimed by him to be in the State of Wisconsin. His voluntary change of domicil from New York to Wisconsin makes him suable there. That might have been done in a state court in equity as well as in the District Court of the United States; but she had a right to pursue her remedy in either. She has chosen to do so in a court of the United States, which has jurisdiction over the subject matter of her claim to the same extent that a court of equity of a State has, and we think that the court below has not committed error in sustaining its jurisdiction over this cause, nor in the decree which it has made. *We affirm the decree of that court, and direct a mandate to be issued accordingly.*"** (Italics in the original)

The holding in ***Ankenbrandt*** is even more platitudinous with the contributions of the members of this Court being akin to a conference of physicians debating for several hours that insulin is the treatment of choice for insulin-dependent diabetes mellitus. But such rehashing and rehearsing by this Court of the most obvious principles, is not at all a useless exercise; it is similar to the personal rededication, fellowship and moral recommitments made by members of a church or mosque or synagogue, in regular services, from time to time. Certiorari may be valid for esoteric reviews but **mandamus and prohibition** concern the ordinary, expected and most routine quality control of the administration of justice in the land of ordered liberty. What would be the benefit of even the most esoteric discovery and useful invention, say for example, of a cure for some very common malady - the common cold - if it were not disseminated routinely to the general public with qualitative uniformity? Utopia, where everything functions with precision, may be a very boring place, but look at its exciting alternative which we are now experiencing!

The District Court is the emergency room of justice, and its physicians are the United States District Judges, who should be making the proper diagnoses and be even more eagerly applying the appropriate therapy, prescribed in lawful orders. The Circuit Courts should be ascertaining that the diagnoses, acute treatments and long-term management of the patients are in accordance with the precepts, principles and promises of that enduring script and protocol - which is never tiring: The Constitution of the United States of America.

However, that is so unfortunately not what has happened in the past several years of this Petitioner's struggle for justice in the Halls of Justice. The following is a sample of the professional and clinical acumen of the United States District Judge, Defendant Richard J. Arcara, in charge of this case, as represented in his operative interpretation and dissemination of acute care, to a citizen fleeing from state oppression, pursuant to 28 U.S.C. 1441 and 1446 (e). (AP 77-79) So, with seat-belts fastened, in preparation for forensic turbulence, please hold on tightly!

Some five months after having cast a Black citizen out of the District Court emergency refuge center - directly into the jail, assisting State **"hi-tech"** oppressors - in the incarceration of that Black citizen, for 78 days and nights, of a four-month purported civil contempt punishment, devised to induce the payment of $16,500, the District Court emergency room physician-judge, assigned to the case - after seeing the politically potent **Objections** (AP 12-31) to the Magistrate Judge's **Report and**

Recommendation (AP 53-61), written while in jail by the prisoner Petitioner (it is quite graphic, but in prison what can one expect, already) - then felt the need to justify the wholly unlawful remand of the matter to State Court, under the ***Ankenbrandt*** **"domestic relations exception"** armamentarium, according to the **"Supreme Court's"** unanimous decision, in the following manner of a modern hysterical and historical spectacle and specter:

> **While Hodge asserts that the Court has original jurisdiction over this action under the Family Support Act of 1988, Pub. L. No. 100-485, Item No. 4, at 3, the Supreme Court recently reaffirmed the validity of the "domestic relations exception" to jurisdiction of federal courts. In Ankenbrandt v. Richards, 112 S. Ct. 2206 (1992), the Court held that "the domestic relations exception, as articulated by this Court since Barber [v. Barber, 21 How. 582, 16 L. Ed. 226 (1859)] divests the federal courts of power to issue alimony and child custody decrees. Id. at 2215.** (AP 9)

Just for the sake of those - other than this Court - who will be reading this Petition, ***Ankenbrandt*** settled the issue in the affirmative of whether - **solely on the basis of the diversity-of-citizenship provision of 28 U.S.C. § 1332** - there was federal jurisdiction to hear a tort case, involving a domestic relations problem of alleged sexual and physical child abuse, committed by a Missouri former husband and his girlfriend, against his children, citizens of Louisiana, where the lawsuit was brought.

The United States District Judge, Defendant Richard J. Arcara, continues:

> **The entirety of the instance action seeks this Court's reexamination and modification of divorce, alimony and child custody decrees rendered in Hodge's Family Court case. While Hodge asserts various violations of his civil rights, it is clear that all his claims derive from, and directly relate to his New York State Family Court actions.** (AP 9-10)

Perhaps the United States District Judge, Defendant Richard J. Arcara's law clerks missed this Rosetta stone planted in footnote #1 of the decision. (footnotes are tiresome, written in small print, and sometimes irrelevant, but not that one) That footnote reveals that one month prior to filing the federal-court action, Carol Ankenbrandt had been successful in obtaining a Jefferson Parish, Louisiana, juvenile court judgment under the

State's child protection law, permanently terminating all of Jon A. Richards' parental rights and permanently enjoining him from any contact with the children. That sordid domestic relations juvenile court history didn't, however, make Carol Ankenbrandt ineligible to prosecute that family-court-related tort case in District Court in Louisiana, pursuant to **28 U.S.C. § 1332,** against her former husband, Jon A. Richards, then a Missouri citizen.

This Petitioner was not seeking **"reexamination and modification of divorce, alimony and child custody decrees,"** in the United States District Court for the Western District of New York; instead, it was simply the ad nauseam, enforcement of a 1989 ***Order of Visitation,*** a constitutionally guaranteed Liberty Interest, in a constitutionally specific manner, and the realization of a Property Interest in a settlement of a marital asset, possessed by the Petitioner in the medical license of a former spouse, in a portion of the Judgment of Divorce (vacated by her; AP 71-72), all being done in the process of, and attendant to, the determination of a lawful ***Order of Support,*** pursuant to the **1988 Family Support Act, P. L. 100-485, 42 U.S.C. § 667** and its grantee State enactment, the **1989 Child Support Standards Act** of the State of New York.

If there is, in the instant case, any resemblance at all to ***Ankenbrandt,*** it would be the very reverse case scenario, since Petitioner was granted a judgment in family court dismissing the second 16-month-long petition, of two fraudulent petitions, to **"terminate the parental rights,"** of this Petitioner. The fraudulent petitions were really counter-petitions of **"astute counsel"** who doesn't need to adhere to any Disciplinary Rules, presents concocted **"operative facts"** and gets little judicial favors, in a splendidly successful **"practice of law,"** and forensic excellence, all designed to neutralize Petitioner's application for enforcement of visitation.

The New York State Erie County Family Court Judge, Defendant James H. Dillon, is always under the guise of what is in the best interest of the children, in fact, only concerned about the retributive interest of **"your"** high paying Black client, who, of course, never gets found guilty of contempt, for week upon week upon week of violations upon violations of an ***Order of Visitation***, in **"full force and effect,"** since May 23, 1989, but as a practical matter doesn't exist. To this very date Petitioner spends an hour every two weeks sitting in Petitioner's car - placing several car-phone calls - and listen to **"we'll be right out,"** and no visitation. Well, except the children broke down on father's day 1993 and spent 24 hours with their physician/attorney father - who is a bad guy, having spent 78 days in jail. That is the course that a constitutionally guaranteed Liberty Interest takes in the New York State Erie County Family Court, in the course of the dissemination of justice in the land of ordered liberty.

Petitioner seeks damages for those **"termination of parental rights"** malicious prosecutions (AP 74; Third Claim), removed to the United States District Court, pursuant to 28 U.S.C. § 1441 (c), (AP 78), where the only issue for jury determination is the amount of damages. The New York State Erie County Family Court has no jurisdiction to entertain such suits for monetary damages, and Petitioner is in a similar position as Hulda A. Barber, who's litigation to collect alimony,

"might have been done in a state court in equity as well as in the District Court of the United States; but she had a right to pursue her remedy in either. She has chosen to do so in a court of the United States, which has jurisdiction over the subject matter of her claim to the same extent that a court of equity of a State has,"

and Petitioner is also situated legally then, in a similar situation as Carol Ankenbrandt, of who's family-court-related tort case this Court proclaimed that,

"because the allegations of the complaint do not request the District Court to issue a divorce, alimony, or child custody decree, (we hold that) the suite is appropriate for the exercise of § 1332 jurisdiction given the existence of diverse [or in the case of Daniel R. Hodge, M.D., J.D., P. L. 100-485, 42 U.S.C. § 667] **citizenship between petitioner and respondents and the pleading of the relevant amount in controversy."**

And a little earlier in ***Ankenbrandt***, this Court's grand finale, was that,

"We thus conclude that the Court of Appeals (or in the case of the Petition for Mandamus to the United States Court of

Appeals for the Second Circuit, i.e., Defendants Thomas J. Meskill, John M. Walker, and Constance Baker Motley) **erred in affirming** (or in this case denying mandamus) **the District Court's rulings** (in this case Defendants Richard J. Arcara and Edmund F. Maxwell) **to decline jurisdiction based on the domestic relations exception to diversity jurisdiction** (or in this case, 28 U.S.C. §§ 1441, 1443, P. L. 100-485, 42 U.S.C. § 667) **and to abstain under the doctrine of *Younger v. Harris, supra.* The exception has no place in a suit such as this one, in which a former spouse sues on behalf of children alleged to have been** (or in this case, an ex-spouse maliciously prosecuted, among multiple other civil - and even criminal incursions and infractions committed by - both the bench and bar) **abused."**

℞ - MANDAMUS MUST LIE! - **℞**

And so must PROHIBITION, because in a reverse-***Ankenbrandt***, schaden-freude, Petitioner failed in the attempted prevention of the infliction of that "**Stacey Koon-Laurence Powell: Rodney King**" wanton (battered ex-husband syndrome; there is, alas, such a conjugal conundrum) physical and psychological trauma, abuse and battery of an unlawful 78 days of incarceration of this former husband, committed upon him, (in a civil rights criminal conspiracy with bench and bar) by a former spouse, under color of law, by her "**astute**" use of the racial animus ingrained in white state and federal judicial officers, agents and employees - and their respective house-negro associates, the nemesis of Black America. The practice of law has come even further down hill to the disgrace of getting little judicial favors for "**your client,**" doled out by corrupt judges. So-called justice, has nothing to do with operative or any other assortment of facts or law. It's who you know and how you are connected!

As surely as there are battered wives and battered former wives, there are battered husbands and battered former husbands, respectively having spouses and ex-spouses prone to use actual or constructive violence for their having been rejected, or for perceiving themselves as having been victims of broken promises, those non-breach-able personal connubial contracts and offers that cannot be refused, and so very many other dysfunctional sentimental interactions, in our scientific democracy.

It is the category and same assortment of pseudo-domestic relations and professional jealousy battles couched in the ubiquitous ♀ vs. ♂ and ♂ vs. ♀ traumatizations, being so commonly used - and to be sure, no ethnic group or racial stock has a monopoly on it - to wit: Anita Hill vs. Mr. Justice THOMAS, (and it is painful for him to have to read this, but he has yet to recover his good name); Desiree Washington vs. Mike Tyson; and Sol Wachtler vs. Joy A. Silverman and many, many more. Should we, as a society, or as executive, legislative or judicial members of state and federal government, sit and wait for some other branch to take the lead and set the standards for diagnosis and treatment, and for legal defenses and remedies in such situations, or should we all hide our heads in the sand and pretend that these are not at all real and pervasive, very personal problems, in our land of ordered liberty?

Petitioner as an emergency room[4] physician who knows

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[4] In the so-called **"Statement of Charges"** pseudo-scientific fraud, product of the New York State Department of Health, Office of Professional Medical Conduct, which were lodged against this Petitioner, and which to this very day have yet to be presented in a proper scientific forum for redress, there was a Patient P, who was determined by this Petitioner to be faking her asthma for some secondary social gain. It is a fairly common occurrence. The emergency room is often the site of battle in an irresolute psychological and interpersonal conflict. Patient P's arterial blood gas, taken in a Buffalo Hospital, demonstrated with scientific definitude, as few other tests can, that she was hysterically hyper-ventilating, having no connection to her actual need for oxygen, or to accommodate to, or adjust for, any physiological aberrancy in the natural progression of her disease.

Patient P, from her St Louis County residence, noted on the bottom of an affidavit, for all its value as an evidentiary instrument,

"Dear Mr. Hodge every thing I agree too [sic] except number 5 because I don't remember you taking blood test. But I understand what you wear [sic] talking about as far as my case. Yours truly."

Because it involves hitting an artery - deeper down in the tissue - taking blood for a blood gas test is a bit more painful than an ordinary venous puncture. Ordinarily, it's not common for patients to forget painful procedures, but Patient P does not remember that painful procedure. Can she on a scientific basis be convicted of perjury? Absolutely not! In her hyper-acute conflictive state, the natural defense of humans is full erasure of large blocks of data from the memory. Science knows at least that much. We don't pretend to know how, let alone why.

There by the grace of God go the Sol Wachtlers and Anita Hills and

(continued...)

first-hand that this psychological syndrome is fairly high on the list of traumas. But even with all these sexual-aberrancy interaction fanfares, there is, so wisely, no **First Amendment** right of assembly or association of one individual with another, and no court can act as a match maker or indirectly force one individual to communicate with another **"for the sake of the kids,"** as the Erie County Family Court has for several years been conditioning this Petitioner's right of visitation with his biological children, because,

> **"it [the First Amendment] has never been held to apply to the right of one individual to associate with another, and certainly it has never been construed as an absolute right of association between a man and a woman at any and all places and times,"** ***Futrell vs. Ahrens***, 540 P. 2d 214 (1975)

MANDAMUS must lie to direct the temporary relinquishment of custody according to a constitutionally specific ***Order of Visitation*** and that the custodial parent be dealt with according to law. Petitioner is not at all interested in a retaliatory incarceration, for that would be most painful to the children, who know that their father is a mental giant, martyr, and stouthearted political dissident. They have no such notion about their mother. If the Court were merely to threaten incarceration, this Petitioner believes that would be sufficient to effect compliance. A five-year term of Probation is in order.

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[4] (...continued)
the Desiree Washingtons. Fabrications or Non-fabrications or déjà vu's, are so very real to these patients, and any one of us can be - some time in our lives - so afflicted. We don't laugh or scoff at physical aberrations, whether temporary or permanent, but we stigmatize the temporary, reversible psychological dysfunctions as if they were permanent bouts of craziness. Such a notion is the only insanity in this whole matter. Is a drunken person insane, or is it a temporary state, wholly reversible by the removal of the causative agent?

The juror, jurist or other observer should at least know that the reliability of such testimony - no matter how seemingly sincere or blatantly affected - can almost never assume the dimensions of scientific definitude - **one way or the other!** Consequently, such conflict-laden testimony can neither be used to convict nor to exonerate. However, like Molière's Monsieur Jourdain - astounded to discover he had been speaking in prose all his life - the good news legal remedy, our beyond a reasonable doubt standard, has for all eternity, already cured that testimonial scientific enigma. Let's apply it more cogently in our laboratory for justice: The Court room.

POINT III: The District Court Has Jurisdiction Over A Case In Controversy, Directly Connected To The Family Support Act of 1988, P. L. 100-485, 42 U.S.C. § 667, Of Income, Assets And Child Support - To Declare A State Court Order To Be In Flagrant Violation Of The Eight, Thirteenth And Fourteenth Amendment Of The Constitution Of The United States Of America - For Precluding The Gainful, Lawful Practice Of Medicine, In Compelling A Black Physician, Or Any Citizen Who Committed No Crime, To Undergo - As A Term Of Probation Staying A Suspension Of A Medical License - A Program Of Involuntary Servitude In A Psychiatric Counselling Program, Even Upon Passing A Psychiatric Examination And Being Found Fit To Practice Medicine.

Although the ***Order of the New York State Education Department Commissioner Cal. No. 10444,*** has expired as of May 15, 1993, this action seeking prohibition of its further and future publication, is by no means moot, since the information placed in data banks still contains totally false information - that this Petitioner was negligent and incompetent - and to be sure that will forever place a fraudulent scar and irreparable harm on this Petitioner's good professional name and personal character and earning power. Moreover, the data bank, known as **The Federation of State Medical Boards of the United States, Inc.,** 6000 Western Place, suite 707, Fort Worth, Texas 76107-4695, (817) 735-4695,

> **"[a]ssumes no responsibility for these steps [to correct and/or update reports] nor does it represent or warrant, either expressly or by implication, that the information contained in the report is accurate and assumes no responsibility for errors or omissions contained in the report."**

The physician licensing authorities and other credentialing agencies which use the Federation's service, cannot enter into an agreement or stipulate to filing fraudulent reports whose accuracy or validity cannot be ascertained and for which the data bank assumes no responsibility. It is immaterial that the parties have made such an agreement since it is unlawful and void regardless of the intentions of the parties. The agreement violates the First Amendment. ***Crosby vs. Bradstreet Company,*** 312 F. 2d 483

(1963). The District Court has an additional reason for exercising its jurisdiction based on diversity. 28 U.S.C. § 1332.

To this day, Petitioner has yet to have a proper forum for refutation and review of those fictitious charges, that are quite amenable to nullification by documentary proof before a jury. The unlawful punishment of this Petitioner thus continues for life, and is cruel and unusual because it is not within the understanding of the **Eight Amendment** of our Constitution that someone be punished for an offense never committed.

That Hearing Committee must be examined before a jury to establish that the so-called **Statement of Charges** is a hoax, and its review of the Petitioner's medical knowledge, clinical acumen and skill, violated ***scientific substantive due process*** and the **Fourteenth Amendment**, and that its report was an absolutely fraudulent document, finding Petitioner **"guilty"** of multiple matters with which Petitioner was not even charged. The Hearing Committee conjured-up its very own **"medical incompetence and negligence"** charges along the way in the proceeding, based on its seriously askew versions and views of **"classical hands-on"** medical arts of yesteryear.

The ***Order of the New York State Education Department Commissioner Cal. No. 10444,*** even though expired must be declared because of its libelous substance and future impact, to have been in violation of the **Thirteenth Amendment** and peonage statutes, compelling the involuntary counselling of the Petitioner for a wholly fictitious mental malady. It also evinces the most vicious forms of race hate, of the Stacey Koon/Laurence Powell vs. Rodney King assortment.

It was, and is, obvious that this Black Petitioner was and still is battling against the notion of Black inferiority and white supremacy, for what other reasons would so many white people gang up against one Black man, who even despite their every effort, proved that they were wholly irrelevant to the process of education and that since all the adversities inflicted upon the Petitioner were fabricated, that there was some other reason, wholly unlawful which accounted for their actions: jealousy, race hate and fear of economic competition.

But our Constitution does not permit those assortments of blatant or covert violations of its provisions, for no one is above it. MANDAMUS must lie to secure a jury trial on the merits and declaratory judgments to restore Petitioner's good name, personal character and professional status, so that Petitioner can at long last, return to living a productive life.

POINT IV: Documentary Indictments Must Be Handed Up And Documentary Convictions For The Civil Rights Crimes Of Conspiracy, False Arrest And Unlawful Incarceration Of An Innocent Citizen, Must Be Effected Against Several Federal And State Judicial Officers.

There is an important juristic admission made by the Defendant United States District Judge, Richard J. Arcara, and posed rhetorically as an "even if" hypothetical, which will be most useful for purposes of nullifying his future judicial immunity claims in the civil rights criminal prosecution, akin to a Stacey Koon and Laurence Powell trial, and it is this:

Under Ankenbrandt, therefore, even if Hodge's state court action had been timely removed pursuant to the second paragraph of 28 U.S.C. § 1446 (b), this Court would have no jurisdiction over the action. Id. § 1446 (b); see also Anderson v. Nebraska, 530 F. Supp. 19, 20-21 (D. Neb.), appeal dismissed, 668 F.2d 349 (8th Cir. 1981); Eramo v. Eramo, No 80-CV-414, slip op. (N.D.N.Y. Dec 30, 1980). The Family Support Act does not require a contrary result. Nothing in that Act confers upon this Court original jurisdiction over Hodge's inherently domestic relations claims.

It has been established ad nauseam that a United States District Court has jurisdiction over an Act of Congress. It is also well established that a second petition for removal may be made, pursuant that second 28 U.S.C. § 1446 (b) paragraph which sprang forth as a result of decisional history going back to 1898, in the case of ***Powers vs. Chesapeake*** and as the act was revised to so reflect in 1949, with the following clarification of the revision:

"The second paragraph of the Amendment to subsection (b) is intended to make clear that the right of removal may be exercised at a later stage of the case if the initial pleading does not state a removal case but its removability is subsequently

disclosed. This is declaratory of the existing rule laid down by the decisions. (See for example *Powers vs. Chesapeake & O. Ry. Co.,* 18 S.Ct 264; 169 U.S. 92 (January 10, 1898)."

The second "**later stage**" removal Petition in ***Powers vs. Chesapeake & O. Ry. Co.,*** was filed a full year after the first removal Petition, ***Powers*** 18 S.Ct at 264. The New York State Erie County Family Court has plenary, continual supervisory jurisdiction of support and visitation matters for, as much as two decades, and therefore that "**initial pleading**" game - as a bar to removal - has no relevance whatsoever in Family Court proceedings where an **Order of Support or Visitation,** may be made by agreement of the parties or at the conclusion of a proceeding brought on by Petition, i.e., that proverbial "**initial pleading.**"

None of the Judicial Officers, involved in this civil rights criminal transmogrification of justice, to wit, Defendant United States District Judges John T. Elfvin and Richard J. Arcara or Defendant United States Magistrate Judge Edmund F. Maxwell or Defendant New York State Erie County Family Court Judge James H. Dillon, complied with the substance, essence and proper procedure that is formulated in accordance with long-standing judgment of Congress, that even a political dissident named Daniel R. Hodge, M.D., J.D., like any other defendant in State Court, has the ***right of removal*** of a case, when the case so warrants - to avoid State Court oppression, as in the days of overt racism in the deep South, or as now, in the liberal North, where under color of law, civil rights crimes, are committed in a conspiracy, by corrupt Federal and State Judicial Officers, who will not get away with their criminality - perpetrated in "**clear and complete absence of all jurisdiction,**" thus removing their judicial immunity cloak. ***Mireles vs. Waco*** 112 S.Ct. 286 (1991), ***Stump vs. Sparkman,*** 435 U.S. 349 (1978), and ***Bradley vs. Fisher,*** 20 L.Ed. 646 (1872).

It is far too little and much too late, five months after the unlawful incarceration of the Petitioner, for Defendant United States District Judge Richard J. Arcara to conjure-up his so-called cover-up, and even further obstruction justice (AP 7-11) Decision and Order of May 13, 1993, in **"self-affirmation of the remand"** of the case to the State civil rights criminals. On January 25, 1993, the (AP 67-68) ***Order of Remand*** **92-CV-0794 A,** dated December 24, 1992, became moot with the filing of the **Notice of Supplemental Verified Petition For Removal Of A Civil Proceeding From The New York State Courts, Which Shall Proceed No Further, Pursuant To 28 U.S.C. §§ 1441, 1443, 1446 (b) (e), FRCP 38, 81 (c). 92-CV-0794 A, 92-CV-0835 A,** jurisdiction was again reverted, by the filing of the second petition ***re Powers,*** to the Federal Court, which the docket sheets establish as a matter of law, (AP 84; 88), and where it remained until the purported May 13, 1993, bogus **"affirmation"** of the fraudulent ***Order of Remand*** **92-CV-0794 A,** on the grounds that, even if it were timely removed pursuant that second **28 U.S.C. § 1446 (b)** paragraph, the Federal District Court has **no jurisdiction over a Congressional Enactment, P.L. 100-485, 42 U.S.C. § 667.** Joseph Stalin was more circumspect.

On December 18, 1992 - a week before the unlawful remand - Petitioner commenced a simultaneous civil and criminal parallel proceeding, in the genre of ***United States vs. Kordel,*** 397 U.S. 1 (1970); ***Devita vs. Sills,*** 422 F. 2d 1172 (CA 3, 1970); ***Security & Exchange Commission vs. First Financial Croup of Texas,*** 659 F. 2d 660 (CA 5, 1981), against all the multiple State and Federal Judicial Officers, attorneys and a Black client - the ex-spouse of the Petitioner. Her defense, of course, is that she thought because they were judges - and moreover, because they were **"white"** that **"they were right."** It is wholly understandable, and any jury will agree.

The **Verified Civil Suit In Equity Compliant, etc.,** (AP 73-75) was - unlawfully referred, without the express consent of the parties - by Defendant United States District Judge Richard J. Arcara to the Defendant United States Magistrate Judge Edmund F. Maxwell on December 30, 1992, purportedly pursuant to 28 U.S.C. § 636 (b)(1)(A), (B), (C) and (c). (See Local Rule 29 and 30, for the Western District of New York; also ***Pacemaker Diagnostic Clinic of America vs. Instromedix,*** 725 F. 2d 537 (1984); ***Collins vs. Forman,*** 729 F. 2d 108 (1984); District of

Columbia Rule 502 (b) . . . **"Neither the judge to whom the case is assigned nor a magistrate shall request or urge that a party or parties consent to such an assignment."**

Defendant United States District Judge Richard J. Arcara had no jurisdiction to even take the case because his ***ab initio*** recusal was mandatory pursuant to 28 U.S.C. § 455 (a), as embodied in the **Decision and Order** in ***Marylou Weppner vs. Edwin Meese III,*** (CIV-86-194 T,WDNY March 4, 1988), (AP 69-70) and ***John A. Liljeberg vs. Health Services Acquisition Corp.,*** 108 S. Ct. 2194 (1988) Those two cases required the disqualification of Defendant United States District Judge Richard J. Arcara, for he very well knew that his colleague on the bench, Defendant United States District Judge John T. Elfvin, was a defendant in the action.

But such is the nature of the conduct of the Defendants in this case; they respect no law, and perceive themselves as having concentrated power in their hands, to use and abuse at their whim and caprice. Erroneously relying, not on a certified ***Order of Remand*** from United States District Court, but on an excerpt of the transcript of the 10:00 am, January 28, 1993, proceeding held before Defendant United States Magistrate Judge Edmund F. Maxwell, who at best could only recommend a remand to the Article III Judge, Defendant Richard J. Arcara, the Defendant Erie Family Court Judge, James H. Dillon, at about 2:00 pm, proclaimed,

"The matter - I'm ruling, right now, that I have received a remand of these issues from the Federal District Court Judge and the matter, right now, from the transcript I've been shown, this Court has jurisdiction and will assume it. * * * Deputy, take the doctor into custody on the prior Order of the Court."

That **civil rights** crime is as glaring as that Rodney King video camera, sordid scenario. MANDAMUS must lie to direct that the matter be sent to the grand jury to find, return and hand up indictments, and for the civil rights criminal prosecution of all the Defendants, as invoked and demanded in the parallel and simultaneous civil and criminal **Verified Civil Suit In Equity Compliant.** (AP 73-75)

Chief Justice Marshall most aptly noted that it is not the

person occupying judicial office who has ***power***, it is the ***law itself***, which a judge must prescribe - in ***lawful*** orders - and implement, and to which he or she, himself or herself must be faithful and meticulously follow, regardless of his or her personal sentiments, jealousies, propensities and frailties. A doctor must prescribe the most appropriate medicine needed to cure or control the disease festering in the friendly or the obnoxious patient, if the body of that patient requires such specific therapy. That is, professionalism! Marshall wrote in ***Osborn vs. U.S. Bank***, 9 Wheaton 738 (1824),

> **"Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are mere instruments of the law, and can will nothing."**

CONCLUSION

For all the foregoing reasons, an **Extraordinary Writ of Mandamus / Prohibition** must issue!

Dated: Amherst, N.Y.
July 30, 1993

Daniel R. Hodge, M.D., J.D.

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United States District Court
WESTERN DISTRICT OF NEW YORK

DANIEL R. HODGE,

JUDGMENT IN A CIVIL CASE

-vs-

MONICA J. APPLEWHITE, M.D., et al.,

Case No. 92-CV-835 A

[ ] JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] DECISION BY COURT. This action came to a hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Plaintiff's motion for disqualification is denied; that Plaintiff's complaint is dismissed with prejudice against all Defendants for the reasons set forth in Magistrate Judge Maxwell's Report and Recommendation.

Date: June 1, 1993 Clerk, RODNEY C. EARLY

(By) Deputy Clerk, Irene J. Imasulo

United States Court of Appeals
FOR THE
SECOND CIRCUIT

WDNY
92-CV-835
Arcara

DANIEL R. HODGE, M.D., J.D., et al.,
Petitioner,

vs. **Docket No. 93-3031**

Richard J. Arcara, U.S.D.J., John T. Elfvin, Sr. U.S.D.J., John T. Curtin, Sr. U.S.D.J., David G. Larimer, U.S.D.J., William M. Skretny, U.S.D.J., Michael A. Telesca, Chf. U.S.D.J., Edmund F. Maxwell, U.S.M.J., James H. Dillon, F.C.J., Sharon S. Townsend, F.C.J., Majorie C. Mix, F.C.J., Anthony P. LoRusso, F.C.J., John F. O'Donnell, F.C.J., Sol Wachtler, Ex-Chf J., NYS Ct. of App., Monica J. Applewhite, M.D., Paul K. Isaac, Esq., Richard Bernhard, Esq.,
Respondents.

Before: **Hon. Thomas J. Meskill, Ch. J., Hon. John M. Walker, C. J., and Hon. Constance Baker Motley, D.J.**

A Petition for a Writ of Mandamus having been filed,

Upon consideration thereof, it is

ORDERED that said petition be and hereby is DENIED.

Further ordered that the Clerk shall serve a copy of this order on the respondents and all parties to the action in the trial court.

ELAINE B. GOLDSMITH, Clerk
By:
Edward J. Guardaro
Staff Attorney

Dated: May 4, 1993

United States District Court
WESTERN DISTRICT OF NEW YORK

DANIEL R. HODGE, M.D., J.D.,
Plaintiff,

ORDER
92-CV-835 A

-vs-

MONICA J. APPLEWHITE, M.D.,
PAUL K. ISAAC, ESQ.,
RICHARD BERNHARD, ESQ.,
Fam Crt Judge, JAMES H. DILLON,
Fam Crt Judge, SHARON S. TOWNSEND,
Fam Crt Judge, MAJORIE C. MIX,
Fam Crt Judge, ANTHONY P. LORUSSO,
Fam Crt Judge, JOHN F. O'DONNELL,
Fed Dct Crt Judge, JOHN T. ELFVIN,
Crt. of App., Ex-Chf J., SOL WACHTLER,
Defendants.

This case was referred to Magistrate Judge Edmund F. Maxwell, pursuant to 28 U.S.C. § 636 (b)(1), on December 31, 1992. On March 29, 1993, Magistrate Judge Maxwell filed a Report and Recommendation addressing the motions to dismiss filed by each of the above-named defendants. Item No. 27. Magistrate Judge Maxwell recommended that the plaintiff's complaint be dismissed against all defendants.

Plaintiff filed objections to the Report and Recommendation on April 16, 1993. Item No. 32. On April 22, 1993, Assistant New York State Attorney General Peter B. Sullivan filed an affidavit in response to the plaintiff's objections on behalf of the defendants Dillon, Townsend, Mix, LoRusso, O'Donnell and Wachtler. Item. No. 33.

Pursuant to 28 U.S.C. § 636 (b)(1), this Court must make a de novo determination of those points of the Report and Recommendation to which objections have been made. However, the Local Rules for the United States District Court for the Western District of New York ("Local Rules") provide that the "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objections and shall be supported by legal authority." Local Rule 30 (a)(3). Plaintiff's objections were filed under the following title:

> **Objections to the so-called 'Report and Recommendation,' United States Magistrate Judge Edmund F. Maxwell and a Motion for a De Novo Determination by a United States District Judge outside the corrupt pseudo-aristocracy on the bench in the Western Judicial District of New York.**

See Item No. 32. This document consist of 28 pages of objections, a 30-page application to the Second Circuit for a writ of mandamus, and a 181-page appendix. Considering only the 28 pages of purported objections, the Court finds them not in compliance with Local Rule 30 (a)(3), as they have no connection to the proposed findings made, or issues addressed by the Magistrate Judge Maxwell in his Report and Recommendation.[1]

---

[1] The headings plaintiff assigns to his "objections" clearly indicate the lack of connection between the objections and the proposed findings in Magistrate Judge's Maxwell's Report and Recommendation:

(1) "Unlawful Tampering With The Original Caption";

(2) "The Mandatory 'Marylou Weppner' Disqualification Of All United States District Judges in Western New York Judicial District And To Vacate And Rescind The Unlawful Order Of Reference To Magistrate Judge Edmund F. Maxwell";

(3) "Petitioner's Right Of Removal Has Been Twice Unlawfully Denied By The Twice Unlawful Remanding Of The Removal Petition By United States District Judges John T. Elfvin And Richard J. Arcara, Based On A Fraudulent, Concocted Procedural Scam [sic]";

(4) "All The Petitions For Removal Premised On 28 U.S.C. § 1441 (a), (b), And (c), And 1441 (1) And (2), Were Wholly Proper"; and

(5) "Warrants Must Be Issued And Indictments Handed-Up By The Grand Jury Against United States Magistrate Edmund F. Maxwell As A Principal In The Conspiracy By Defendant Erie County Family Court Judge James H. Dillon And Co-Conspirator Paul K. Isaac, Esq., To Falsely And Did In Fact Unlawfully Incarcerate The Petitioner."

Item No. 32, at 1-27.

Plaintiff has not cited objections to specific portions of the proposed findings and recommendations with respect to his eight causes of action, but instead launches anew into "irrelevant accusations and pontifications" against various ethnic and religious groups, directed not only at defendants, but at the Magistrate Judge Maxwell and this Court as well.

The only portion of plaintiff's "objections" that even remotely relates to the proposed findings in the Report and Recommendation is that regarding removal. To the extent these "objections" refer to Magistrate Maxwell's analysis of removal, Item No. 27 at 6-7, the Court adopts the recommended finding that this Court has no jurisdiction to entertain plaintiff's domestic relations claims. To the extent the "objections" reference this Court's earlier sua sponte remand of another of plaintiff's cases, 92-CV-794 A, they need not be addressed as they have no relevance to determination of the motions in this case.

Despite plaintiff's failure to comply with Local Rule 30 (a)(3), however, the Court has reviewed the Report and Recommendation de novo. Upon such a review, and a review of the submissions of the parties, the Court adopts the findings of the Report and Recommendation.

The Court notes that plaintiff appears to seek disqualification of this Court and all District Court Judges in the Western District of New York. See Item No. 32. To the extent this issue is before the Court,[2] the Court finds plaintiff's arguments without merit. Of the ten defendants named in this case, seven are judges. Plaintiff has demonstrated that any jurist who issues a ruling adverse to him is likely to be named a defendant in a civil action.

Unsupported conclusory allegations of wrongdoing by the judiciary only serve to slow the entire judicial process and result in increased cost and unnecessary delay. A reasonable person knowing and understanding all the relevant facts would not seek this Court's recusal and the recusal of all other judges in this District simply because Judge Elfvin was named as a defendant in this case. See In re Drexel Burham Lambert, Inc., 861 F. 2d 1307, 1313 (2d Cir. 1988) cert. denied, 490 U.S. 1102 (1989).

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[2] Plaintiff filed a writ of mandamus with the Second Circuit seeking disqualification of this Court and all the other judges in the District. The Second Circuit denied plaintiff's petition on May 4, 1993.

Accordingly, IT IS HEREBY ORDERED, that plaintiff's motion for disqualification is denied.

IT IS FURTHER ORDERED that plaintiff's complaint is dismissed with prejudice against all defendants for the reasons set forth in Magistrate Judge Maxwell's Report and Recommendation. The Clerk is ordered to enter judgment for the defendants.

IT IS SO ORDERED.

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: May 24, 1993

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Monica J. Applewhite
Petitioner,
vs.

Docket No. F-4148-89
Docket No. F-1148-91

Daniel R. Hodge,
Respondent.

DECISION AND ORDER
92-CV-794 A

Daniel R. Hodge,
Petitioner,
vs.

Docket No. F-4414-89
Docket No. F-1634-92

Monica J. Applewhite,
Respondent.

On December 24, 1992, the Court filed a Decision and Order sua sponte remanding the above-captioned action to state court for failure to timely remove the action pursuant to 28 U.S.C. § 1446 (b), which provides in relevant part that "notice of removal of a civil action . . . shall be filed within thirty days after the receipt by the defendant . . . a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based...." See Item No. 3. The state court action sought to be removed has been ongoing for over three years. On December 18, 1992, prior to the Court's Decision and Order, Daniel R. Hodge filed another lawsuit, 92-CV-835A.

On January 4, 1993, Hodge filed the following document under the docket numbers for both cases:

> Ex-Parte Motion to Vacate the Unlawful Sua Sponte Order Remanding of [sic] The Verified Petition for Removal of A civil Proceeding From the New York State Courts, Pursuant To 28 U.S.C.§§ 1441, 1443, 1446 (e), FRCP 38, 81 (c), 92-CV-0794, And For The Consolidation Of All Matters As A Matter Of Law, Pursuant [sic] 28 U.S.C. § 1441 (c), And For A Stay Of The Remanded Order Pending Appeal Pursuant To 28 U.S.C. § 1443 And Prosecution Of The Operative Factually Connected Verified Civil Suit In Equity Complaint Arising Under 28 U.S.C. §§ 1331, 1343 (a) (1) (2) (3) (4), 1441, 1443, 2201, 2202, 1738, 1861, 1862, 1863, And Under The U.S. Constitution And 42 U.S.C. §§ 1981, 1983, 1985 & 1986, And For An Evidentiary Hearing In The Prosecution Of Civil Rights Crimes Pursuant to 18 U.S.C. §§ 2, 3, 4, 241, 242, 245, 371, 876, 1001, 1018, 1341, 1513, 1514, 1581, 1583, 1584, 1621, 1622, 92-CV-0835, pursuant to Federal Rules of Civil Procedure, Rule 42 (a).

Item No. 4.

The Court treats this submission, to the extent it applies to the instant action,[1] as a motion pursuant to Fed. R. Civ. P. 59(e) to alter or amend the Court's Order of remand. Hodge also seeks consolidation of the instant action with 92-CV-835A.

Hodge asserts that this action was removable to federal court under the second paragraph of § 1446 (b), which provided that:

> If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an

---

[1] References in Hodge's motion to claims brought in 92-CV-835 A and a request for an evidentiary hearing in the prosecution of various civil rights crimes are relevant only to 90-CV-835 A, [sic] and will not be considered by the Court.

> amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable....

Hodge asserts that the state court action became removable on November 2, 1992, when Erie County Family Court Judge James H. Dillon filed an "Order of Disposition" in Monica J. Applewhite v. Daniel R. Hodge. Item No. 4, at 2-3. Hodge's Petition for Removal was filed on November 30, 1992, within thirty days of that event.

The Court finds without merit Hodge's assertion that the filing of the "Order of Disposition" by Judge Dillon made the Family Court action removable to federal court because only actions over which the district court has original jurisdiction or in which no defendants are citizens of the state where the action is brought, can be removed to federal court. 28 U.S.C. § 1441 (b). Hodge appears to be a citizen of New York, the state in which the action was commenced. In addition, the Court does not have original jurisdiction over this case. Hodge has attempted to remove four separately-docketed Family Court actions--two commenced against him by his ex-wife, Monica J. Applewhite, for support, (Erie County Family Court Docket No. 4148-89), and termination of parental rights, (Family Court Docket No. 1148-91); and two commenced by him against Applewhite regarding support modification. (Family Court Docket Nos. 4414-89 and 1634-92).

While Hodge asserts that the Court has original jurisdiction over this action under the Family Support Act of 1988, Pub. L. No. 100-485, Item No. 4, at 3, the Supreme Court recently reaffirmed the validity of the "domestic relations exception" to jurisdiction of federal courts. In Ankenbrandt v. Richards, 112 S. Ct. 2206 (1992), the Court held that "the domestic relations exception, as articulated by this Court since Baber [v. Barber, 21 How. 582, 16 L. Ed. 226(1859)] divests the federal courts of power to issue alimony and child custody decrees. Id. at 2215. The entirety of the instance action seeks this Court's reexamination and modification of divorce, alimony and child custody decrees rendered in Hodge's Family Court case. While Hodge asserts various violations of his civil rights, it is clear that all his claims derive from, and directly relate to his New York State Family Court actions. Under Ankenbrandt, therefore, even if Hodge's state court action had been timely removed pursuant to the second paragraph of 28 U.S.C. § 1446 (b), this Court would have no jurisdiction over the action. Id. § 1446 (b); see also Anderson v. Nebraska, 530 F. Supp. 19, 20-21 (D. Neb.), appeal dismissed, 668 F.2d 349 (8th Cir. 1981); Eramo v. Eramo, No 80-CV-414, slip op. (N.D.N.Y. Dec 30, 1980). The Family Support Act does not require a contrary result. Nothing in that Act confers upon this Court original jurisdiction over Hodge's inherently domestic relations claims.[2]

Further, the Court finds that removal is not appropriate under 28 U.S.C. § 1443.[3] For purposes of § 1443 (1), the Family Support Act and Family Court Act cited by Hodge, Item No. 4, ¶ 10; Item No. 1, ¶ 3, are not federal laws "providing for specific civil rights stated in terms of racial equality." Georgia v. Rachel, 384 U.S. 780, 792 (1966). See generally 14A Charles A. Wright et al., Federal Practice and Procedures § 3728 (1985) [hereinafter Federal Practice and Procedure]. With respect to § 1443 (2), the first portion of that section has been held to allow removal only where the defendant is a federal officer or agent or one authorized to act with or for them in affirmatively executing duties under any federal law providing for equal civil rights. See City of Greenwood v. Peacock, 384 U.S. 808, 824 (1966). The second portion has been held to allow removal only to state officers. Federal Practice and Procedure § 3728, at 479. Further, to the extent Hodge can seek removal under the second portion of § 1443 (2), the Court finds nothing in his notice of removal or motion to alter or amend that would suggest, much less support an assertion that he refused to do any act on the ground that it would be inconsistent with a law providing for equal rights. § 1443 (2).

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[2] The Court Having found that it has no subject matter jurisdiction over this action, it need not consider Hodge's "Notice of Filing Of The Supplemental Verified Petition For Removal..." Item No. 6.

[3] Section 1443 provides that the following civil actions or criminal prosecutions are removable from state to federal court:

> (1) [Those] [a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

The Court concludes, therefore, that remand of the instant action to state court was proper.

Accordingly, IT IS HEREBY ORDERED that Hodge's motion to alter or amend this Court's sua sponte motion to remand the instant action to state court is denied, and the Order of remand is affirmed. Hodge's motion to consolidate this action with 92-CV-835A is denied.

IT IS FURTHER ORDERED that the Clerk of the Court will no longer accept for filing in this case any documents that relate or refer to 92-CV-835A, regardless of whether both docket numbers are listed on the document. See e.g., Item Nos. 5 (Notice of Cross-Motion for Summary Judgment on all Claims for Relief); 7 (Supplemental Notice of Cross-Motion for a Preliminary Injunction); 8 (Affidavit in Support); 10 (Application to Mr. Justice Thomas); or 11 (Notice of Request for Extension of Time to File Objections to Report and Recommendation). Only documents and submissions relevant to 92-CV-794A will be accepted for filing under this docket number.

IT IS SO ORDERED.

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: May 13, 1993

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Monica J. Applewhite
Petitioner,
F-4148-89, F-1148-91
vs.

Daniel R. Hodge
Respondent.

Daniel R. Hodge
Petitioner,
F-4414-89, F-1634-92
vs.

Monica J. Applewhite
Respondent.

Daniel R. Hodge, M.D., J.D., et al.,

vs.

Monica Applewhite, M.D.,
Paul K. Isaac, Esq.,
Richard Bernhard, Esq.,
F. C . J., James H. Dillon,
F. C . J , Sharon S. Townsend,
F. C . J., Marjorie C. Mix,
F. C . J., Anthony P. LoRusso,
F. C . J., John F. O'Donnell,
F. D. Crt Judge, John T. Elfvin,
Ct App, Ex-Chf J. Sol Wachtler

92-CV-835 A; 92-CV-794 A

Objections to the so-called "Report and Recommendation," United States Magistrate Judge Edmund F. Maxwell and a Motion for a De Novo Determination by a United States District Judge outside of the corrupt pseudo-aristocracy on the bench in the Western Judicial District of New York

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OBJECTION # 1

Unlawfully Tampering With The Original Caption

1. Ill-educated, incompetent & inept United States Magistrate Judge Edmund F. Maxwell, first of all, has no jurisdiction whatsoever to sua sponte alter the original caption of this parallel and simultaneous, civil and criminal, consolidated removal and **Verified Civil Suit In Equity Complaint**, least of all, to attempt to clean up the public relations images of these corrupt, pseudo-aristocratic Defendant Judicial Officers, by having the unmitigated gall to place the word **"honorable"** before (See Appendix attached, at page AP 138, caption crafted by United States Magistrate Judge Edmund F. Maxwell) the names of those royal jerks, corrupt, pseudo-intellectualoid bosom-budies on the New York State Eerie KKKounty Family KKKourt, the New York State KKKourt of Appeals, and the District KKKourt for the Western District of New York, all in the province and control of the Irish, Italian and Jewish, pseudo-aristocracy and pseudo-intelligentsia.

2. During the pendency of this magellanic dragnet of ethnocentric white supremacy racists - on, off and before the bench, in this parallel and simultaneous, civil and criminal, consolidated removal and **Verified Civil Suit In Equity Complaint**, two of those so-called most **"honorable"** Defendants, that is to say, Sol Wachtler and Anthony P. LoRusso, have been forced to leave the bench and will be likely disbarred, because of their most heinous and reprehensible conduct involving lecherous, lascivious, licentious and lewed sexual conduct on and off the bench. (See pages AP 152-153, which are newspaper-article deftly depicted sociological and low life, high society wonders, including a sample of excerpts from the Defendant Sol Wachtler's confession to the crime of transmitting threatening interstate communications in violation of 18 U.S.C. § 875 (c) and a copy of one of the extortion letters - AP 154 - that Defendant Sol Wachtler wrote to ex-lover-ly Joy A. Silverman; it is an absolute abomination and national disgrace; and this is a man that was supposed to protect the most rudimentary of human rights, at the highest level of judicial review in the State of New York).

3. From the most obvious admissions, confessions

and/or documentary conduct of the Defendants Wachtler and LoRusso, two happily married men, it is clear that these men could not control their sexual conduct such as to remain within the bounds of civil or criminal law, hedonistic Beau Brummells that they perceived themselves to be. Performing their documentary and testamentary, extra-marital and extra-corricular, sexual or sex-related activities - on and off the bench - is not the real "sin," it is the absolute refusal - even then - to grant - in our scientific democracy in the liberal north - the **"right of privacy"** and **"right of association"** within the meaning of the **"Bill of Rights"** of our enduring Constitution, to another individual who said, **"NO MOH."**

4. Defendant John T. **"Edna Paczynski"** Elfvin and Richard J. **"Marylou Weppner"** Arcara, respectively can't hide either, in Barbados or behind mascara, to conceal their sexual harassment misconduct on and off the bench, and even in chambers hanky-pankying, using the power and prestige of their judicial office to prey on ultra-vulnerables, readily within the grasp of their voracious talons: namely, secretaries, court reporters & law clerks.

WHEREFORE, the Petitioner vehemently **OBJECTS** to any alteration of the caption, most certainly not to permit the **"clearly erroneous"** references to any of the Judicial Officer Defendants - in this parallel and simultaneous, civil and criminal dragnet caption - by the use of the word **"honorable,"** as a title of dignity, either before or after their names, since such empty adulations and affectations are flagrantly contrary to fact and law, let alone common sense.

OBJECTION # 2

The Mandatory "Marylou Weppner" Disqualification Of All United States District Judges In Western New York Judicial District And To Vacate And Rescind The Unlawful Order Of Reference To Magistrate Judge Edmund F. Maxwell.

5. It has been the Federal Judicial Officer policy since at least March 4, 1988, (AP 1-3) that whenever a United States District Judge in the Western District of New York is a party to an action that all of the United States District Judges

must disqualify themselves and that a United States District Judge from another District within the Second Circuit should hear the case. ***Marylou Weppner vs. Edwin Meese III,*** CIV-86-194 T.

6. United States District Judge Richard J. Arcara very well knew about that policy, since his alleged conduct was the very reason for its formulation, but he knowingly and maliciously - in order to join in the conspiracy to incarcerate the Petitioner, took it upon himself to **sua sponte** and unlawfully remand the case to **"help out"** his co-conspirators, in accomplishing their dastardly objectives in the unlawful incarceration of the Petitioner.

WHEREFORE, the Petitioner vehemently **OBJECTS** to:

a. First, the **"clearly erroneous,"** flagrantly contrary to fact and law assumption of jurisdiction by United States District Judge Richard J. Arcara, despite the mandatory **"Marylou Weppner"** disqualification predicament of all United States District Judges in the Western District of New York. All United States District Judges in the Western District of New York must be directed - by the United States District Judge outside of the Western New York Judicial District selected to hear the case - to instantly disqualify (AP 1-3) themselves from hearing this case pursuant to 28 U.S.C. § 455 (a).

b. Secondly, the District Court clerk must be directed by the incoming United States District Court Judge selected to handle the case, to vacate and rescind the unlawful Order of Reference to United States Magistrate Judge Edmund F. Maxwell and to open and vacate the sua sponte remanded case 92-CV-794 A. Although United States Magistrate Judge Edmund F. Maxwell needs no consent of the parties to issue warrants, (AP 106, 115) resulting and pursuant to written allegations of the essential facts constituting the offenses charged in the **Verified Civil Suit In Equity Complaint,** however, he has no jurisdiction to act in the civil aspects of this case without the expressed consent (AP 174-176) of the parties pursuant to 28 U.S.C. § 636 (c) and therefore he has no jurisdiction to even make his so-called **"Report and Recommendation."** ***Pacemaker Diagnostic Clinic, Inc., vs. Instromedix, Inc.,*** in banc 725 F. 2d 537 (9th Cir. 1984);

Collins vs. Foreman, 729 F. 2d 108 (2nd Cir. 1984). United States District Judge Richard J. Arcara used the same unlawful scheme as did United States District Judge John T. Elfvin of ignoring the second paragraph of the removal statute in order to remand and thus deny Petitioner due process in the United States District Court.

c. Thirdly, a full hearing before a jury must be had to determine the ultimate fact of whether the Petitioner **"willfully and intentionally"** violated an **Order of Support** or whether Petitioner's lawful **Basic Child Support Obligation** is the statutory amount pursuant to (AP 156-159) Family Support Act of 1988, and 42 U.S.C. § 667 et seq., of $25 per month as is required (AP 13) of someone in Petitioner's victimized, actual, disastrous economic and professional circumstances - resulting even then from the eight-year-long corrupt and criminal conduct of State and Federal officials.

OBJECTION # 3

Petitioner's Right Of Removal Has Been Twice Unlawfully Denied By The Twice Unlawful Remanding Of The Removal Petition By United States District Judges John T. Elfvin And Richard J. Arcara, Based On A Fraudulent, Concocted Procedural Scheme.

7. Based on a fraudulent scheme of false and misleading statements of the law, by purposely omitting the second paragraph of the removal statute, 28 U.S.C. § 1446 (b), Petitioner has been twice unlawfully denied the right of removal, in the Defendants' furtherance of a racist criminal conspiracy, whose sole motive was to degrade and denigrate the Petitioner's personal and professional reputation by unlawfully incarcerating this Petitioner - though fully well knowing that it was a white racist hoax, which would eventually be revealed as such to the whole wide world.

8. Although untrustworthy testimony doesn't become less untrustworthy by repetition, it seems, however, that if enough white racist conspirators on the bench get together and repeatedly make false statements of law and fact, for a long enough period, then those false statements of law and fact, in the kangaroo and perverted procedures characteristic of the Arcara-Elfvin-Curtin

adminstration of justice, become "**subcultural judicial law**" used in this era of the high technology of Black oppression to subjugate the ignorant, timid and the weak. Except for one little problem: They ain't dealin' wid no mere freed slave, who is likely to apologize to even dumb white folk for having been born.

9. The procedure for removal is provided in 28 U.S.C. § 1446 (b), [not 1441, as stated on page 2, AP 139, of the so-called "**Report and Recommendation**"] which has two paragraphs, the second, ad nauseam reads as follows:

> **"If the case stated by the initial pleading is not removable, petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."**

10. Most specifically, that second paragraph sprang forth as a result of decisional history going back to 1898, in the case of ***Powers vs. Chesapeake*** and as the act was revised to so reflect in 1949, with the following clarification of the revision:

> **"The second paragraph of the Amendment to subsection (b) is intended to make clear that the right of removal may be exercised at a later stage of the case if the initial pleading does not state a removal case but its removability is subsequently disclosed. This is declaratory of the existing rule laid down by the decisions. (See for example *Powers vs. Chesapeake & O. Ry. Co.,* 18 S.Ct 264; 169 U.S. 92 (January 10, 1898)."**

11. The second "**later stage**" removal Petition in ***Powers vs. Chesapeake & O. Ry. Co.,*** was filed a full year after the first removal Petition, **Powers** 18 S.Ct at 264. Family Court has continual jurisdiction of support and visitation matters for as much as two decades, and therefore that "**initial pleading**" game - as a bar to removal - has no relevance whatsoever in Family Court proceedings where an **Order of Support,** may be made by agreement of the parties or at the conclusion of a proceeding brought on by Petition, i.e., that proverbial "**initial pleading.**"

12. No Judicial Officers, to wit, United States District Judge John T. Elfvin and Richard J. Arcara or United States Magistrate Judge Edmund F. Maxwell or New York State Erie County Family Court Judge James H. Dillon, have - yet to this

very nanosecond - to comply with the substance, essence and proper procedure that is formulated in accordance with long-standing judgment of Congress that even a political dissident named Daniel R. Hodge, M.D., J.D., like any other defendant in State Court, has the right of removal of a case, when the case so warrants. And as sure as the stars up above, those corrupt Federal and State judicial officers, will not get away with their criminality - perpetrated in **"clear and complete absence of all jurisdiction,"** thus removing their judicial immunity cloak. ***Mireles vs. Waco*** 112 S.Ct. 286 (1991), ***Stump vs. Sparkman,*** 435 U.S. 349 (1978), and ***Bradley vs. Fisher,*** 20 L.Ed. 646 (1872).

13. It is not expected that an ill-educated, inept and incompetent United States Magistrate Judge like Edmund F. Maxwell, would ever be able to present a collegiate legal dissertation on the right of removal, or any other constitutional matters. A brief perusal of his so-called **"Report and Recommendation,"** (AP 138-149) and oral argument before him (AP 48-124) brings back memories of the Orval E. Faubus/George Corley Wallace era of raw racism in the deep South. In an absolutely disgraceful, sloppy, amateurish series of confabulations and sophistry, akin to the Defendant then Hearing Examiner Marjorie C. Mixian so-called **"threshold to modification"** activating **"Findings of Fiction,"** the United States Magistrate Judge Edmund F. Maxwell's **"Report and Recommendation,"** ostensibly **"argues"** that Federal Courts are these autonomously functioning entities, planted in various strategic locations in the States, called for a lack of a more appropriately descriptive term - Federal Judicial Districts - existing solely to provide tenured, life-time employment for corrupt Article III Judges and their sycophantic magistrates, as they are all so very busy nowadays, hearing drug, weapons, related robbery & racketeering and felony murder cases, that there is absolutely no time or money or room left over for civil cases, let alone, civil rights cases.

14. The real deal is, however, that these Western District of New York Article III Judges are so busy **"chasin' after skirts & frocks,"** in general - and particularly overpowering their

helpless secretaries and law clerks - that they even don't have time or any interest whatsoever in the adminstration of justice, due to their pre-occupation in their pursuit of haphazardous & hapless hedonism.

15. Recently, in a campaign contrived to clean up their judicial images, in light of the Wachtler/LoRusso assortment of judiciary slumming, corruption and criminality, the Article III Judges in the Western District of New York have called in their supporters at the Buffalo News, featuring such brownnosers as staff reporter Dan Herbeck, to give a purportedly **"balanced picture"** of judicial affairs and predicaments. Dan then - not even cleverly, it isn't at all perceived as being essential - painted a composite portrait of national comparitive panoramas (AP 150-151), depicting an avalanche of pending cases, in the Western New York Judicial District, now ranking 91St out of 94 throughout the nation, the so-called **"Big Backlog In Buffalo Courts"** which should really be captioned as **"Big Lecherous Logs On Buffalo Benches"** to give a more accurate account of what is, for all ages and eras, hardly any news to Buffalonians.

16. After revealing those sordid judiciary facts, i.e., that United States District Judge Arcara leads the pack with 559 and Senior United States District Judge Curtin trails the herd with 262 pending cases, then Dan further did what he was really and actually called in to do in the first place - lobby for more Article III Judges - all in the face of an ever shortening umbilical cord to Washington. The more practical and lawful thing to do is to prosecute them for their wanton corruption and criminality and send them off to the Federal Penitentiary along with Sol Wachtler and hire some new blood, not the same (AP 179-181) assortment of Shamrocks, Shillelaghs, Leaning Towers-a-Pisa's, Yamulkas & Star-a-Davids to conduct sempiternal hymns of hedonism, corruption and criminality at annual salaries of $129,500.

17. Buffalo News readers also get to know about the splendid benefits of a paragon of justice called an **"arbitration program"** which Article III Judges are urging attorneys to **"take advantage of,"** in accordance with the promotional scheme of Ms. Rachel Brody Bandych, who was appointed by Chief United States District Judge Michael A. Telesca to be a **"civil justice**

reform attorney." Ms Bandych **"independently"** made the serendipitous, scientific, critique & forensic analysis that,

"The criminal caseload is growing so fast in this district that civil trials have almost become a luxury. One suggestion that has been made is for judges to be a little more pro-active in moving cases along, bringing attorneys in for settlement conferences. We're also looking at encouraging the use of the magistrate judges to handle more civil trials."

18. And Ms. Bandych, of course, is promoting the **"magistrate civil trial"** program & ploy, by consent of the parties (AP 174-176), of course, under the orchestration of empty-headed gargoyles like United States Magistrate Judge Edmund F. **"play dumb"** Maxwell, who wants to **"remand"** cases of original jurisdiction 42 U.S.C. § 667 (AP 155-159) such as Acts of Congress and even civil rights crimes, under the premise that the Rodney King **"loss in State Court"** (AP 145-146) is what he deserved and that this **"relitigation"** of the same facts in a sequential or even parallel proceeding is double jeopardy - because United Magistrate Judge Edmund F. **"play dumb"** Maxwell, had not been familiar with the constitutionality of parallel and simultaneous civil and criminal proceedings in the genre of ***United States vs. Kordel,*** 397 U.S. 1 (1970); ***Devita vs. Sills,*** 422 F. 2d 1172 (CA 3, 1970); ***Security & Exchange Commission vs. First Financial Group of Texas,*** 659 F. 2d 660 (CA 5, 1981)

WHEREFORE, the Petitioner vigorously **OBJECTS** to the fallacious and farcical schemes and unsophisticated sophistry being used by United States Magistrate Judge Edmund **"play dumb"** Maxwell to justify the twice unlawfully remanded, on August 29, 1991 and December 24, 1992 and the third time January 25, 1993, ignored and maliciously discounted as being **"not before me"** ploy regarding the wanton denial of the right of removal of the Petitioner, grounded on the alleged **"initial pleading"** untimely hoax as a basis for a commencement of the 30-day statute of limitations.

OBJECTION # 4

All The Petitions For Removal Premised On 28 U.S.C. §§ 1441 (a), (b), And (c), And 1443 (1) And (2), Were Wholly Proper.

19. The World should not expect a Law Review calibre treatise on the substance and essence of the removal statutes to come from either United States District Judge Richard J. Arcara or John T. Elfvin or United States Magistrate Judge Edmund F. Maxwell. There was no surprise as to the qualitative **"measure of excellence"** in the judiciary performance of, and the cranial power on, the Federal bench in Western New York.

20. The removal statute, 28 U.S.C. § 1441 (a), permits removal to the District Court of any civil action brought in a State Court in which the United States District Courts have original jurisdiction, as is the case of 42 U.S.C. § 667 (AP 155-159), which provides in pertinent parts that,

> **"(a) Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.**
>
> **(b) (2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case."**

21. Since the level of incompetence, ineptitude and corruption of United States Magistrate Judge Edmund F. "meathead" Maxwell is so very well documented in his so-called "Report and Recommendation" then his accusative, baroque, barrage of blarney that Petitioner's Petition for removal premised on P. L. 100-485 and 42 U.S.C. § 667 (AP 156-159), under the category of **"original jurisdiction"** within the meaning of 28 U.S.C. § 1441 (a) was **"utterly specious,"** (AP 144) can be summarily ignored. But removing a matter involving P. L. 100-485 and 42

U.S.C. § 667 (AP 156-159), original jurisdiction is neither specious nor spectacular but a most mundane and rudimentary forensic fact that United States Magistrate Judge Edmund F. **"play dumb"** Maxwell shuns like the devil avoids innocence.

22. Consequently, United States Magistrate Judge Edmund F. **"play dumb"** Maxwell continues his faceless farce, and like a screamin' banshee tenaciously clings to his ridiculous, groveling, racist trifles in his ulltra-absurd **"Report and Recommendations,"** and accordingly he is being repeatedly tripped up by multiple factually incompatible and inconsistent little Dostoyevsky details. Maxi writes in lyrical gaelic contortions, featuring such lavish liberal lies, that,

"As noted above, this court has no jurisdiction to entertain suits addressing domestic relations. [Let's ask Defendant Sol Salacious Wachtler if that is really so, in light of Joy A. Silverman's most entertaining 18 U.S.C. § 875 (c) (AP 154) domestic relations complaint to which Sol confessed]. **There is nothing in the Family Support Act to change that jurisdictional limitation.** [How about 42 U.S.C. § 667 (AP 156-159)?] **The actions of which Dr. Hodge complains are state court's application of state law. A federal court does not sit to tell state courts that they misapplied state law." (AP 144)**

23. United States Magistrate Judge Edmund F. **"pretentious"** Maxwell has things balled up in a skein of corruption and criminality on and before the bench and is most surely not dealin' wid no mere freed slave. Indeed this is not time for Eleventh Hour, Eleventh Amendment sounding sliperoos in a desparate attempt to slide out of a congressional ultimatum called P. L. 100-485 and 42 U.S.C. § 667 (AP 156-159). The United States Congress has plainly stated in no uncertain terms - and re-listen to this Maxi - that,

"(a) Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State."

24. That language is so unmistakably mandatory. New York State's failure to enact such guidelines - in the Child Support Standards Act, as a grantee of the federal government - by October 13, 1989, would have resulted in the withholding of

reimbursement of funds for Aid to Families with Dependent Children, to the tune of $133 million in Federal Aid. That sounds more like **"an offer yuh can't refuse federal-godfather kinda deal,"** rather than a mere, **"no jurisdiction to entertain suits addressing domestic relations."** And most emphatically, if a state is not in full compliance with any provision of the Family Support Act, a state citizen has not only a right but an absolute legal obligation to force that state to so conform its conduct so as to fully comply with federal law - and brought on most appropriately by an action in federal Court. That's how the real deal goes down.

25. Yet another false statement of law being promoted as legal gospel is that,

> **"At argument Dr. Hodge seemingly complained of Defendant Elfvin's earlier refusal to allow removal of an action in 1991. [AP 85-88] Any denial of removal pursuant to 28 U.S.C. § 1441 (a) is reviewable in very limited circumstances, and then only by the Circuit Court of Appeals." (AP 147)**

26. That statement is absolutely false, because according to 28 U.S.C. § 1447 (d),

> **"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."**

27. Petitioner appealed under the 28 U.S.C. § 1443 (1) and (2) removal provision to the Second Circuit solely to be able to reach the then ailing Mr. Justice **MARSHALL,** in an attempt to get a Stay of the kkkangaroo proceeding responsible for this unlawful incarceration. The application reached that Shamrock & Shillelagh white racist Mr. Justice Anthony M. **KENNEDY,** who is a member of a country club in the Ninth Circuit which denies membership to Negroes, and who to no one's surprise likewise denied a Nigga/docta/lawya a Stay on October 2, 1991, so that his fellow Shamrock & Shillelagh racist Defendant Erie County Family Court Judge James H. Dillon could carry out the dastardly deed that is now the subject of this action. That is how the real deal went down and at some point this sordid abomination shall all be revealed to the Whole Wide World as being a white racist hoax. Incarceration hasn't changed this Petitioner one IOTA, even

during this farce, while the vultures are, trying to collect a white racist hoax of a $16,500 judgment from a destitute inmate's account. (AP 160-165). It is such an absolute disgrace for a woman making $150,000 a year. The Shamrock & Shillelagh & Star-a-David (AP 179-181) racists can't merely attempt to intimidate a Nigga/docta/lawya/inmate, dey gotta kill, kill, kill da Nigga!!

28. Mundanely, 28 U.S.C. § 1441 (b) permits removal of a matter by a State Defendant in a civil action of which the District Court also has **"original jurisdiction"** founded on a claim or right arising under the Constitution or laws of the United States. Clearly, a state citizen's rights, for example, under the Eight, Thirteenth and Fourteenth Amendments are what Congress has in mind. And it is clearly a violation of peonage statutes 18 U.S.C. §§ 1581, 1583 and 1584 to be ordering a Negro/docta/lawya to have a psychiatric examination for speech reproaching the corruption and criminality of **"northern liberal"** institutionalized white racism - on, off and before the bench and bar - and then coercing that Negro/docta/lawya, as a term of a fallacious scheme of probation, for pretended and fabricated offenses of medical misconduct, to have psychiatric counselling even if he passes a psychiatric examination, all conjured up to prevent him from the lawful practice of medicine.

29. An all blond & blue-eyed jury - not a bunch of corrupt & criminal judges sitin' on the white racist benches of northern liberal New York State - shall decide whether Dr. Hodge practiced scientifically supportable medicine, and whether Dr. Hodge is suffering from a mental disability for tellin' racist white folk to go to hell, and whether Dr. Hodge **"willfully and intentionally,"** violated an ab initio, as of September 1, 1989, unlawful **Order of Support,** after being pushed into bankruptcy and imprisoned falsely after a perverted kangaroo so-called contempt & commitment proceeding, and after being repeatedly raped up to the splenic flexure during seven years of battles with a bunch of jealous O'Hoolagans Shamrock & Shillelagh racists named McAloon, Kelly, Maldovan, Sullivan, Curtin, Elfvin, O'Donnell and Dillon. (AP 181)

30. Petitioner has wound up in Erie County Prison as

an inmate and political dissident being persecuted - not lawfully prosecuted - in the same sempiternal white racist shamrock & shillelagh scheme which started out in 1985 in Attica Prison by the denial of the most basic constitutional rights of this Petitioner by corrupt racists like Kelly, Maldovan and Sullivan, before Mr. Desegregation and Mr. Busing of little Nigga's across town to be degraded, the great liberal northern racist John T. "**seek employment elsewhere and still attend law school**" Curtin.

31. As a practical adjunct to the removal repertoire, 28 U.S.C. § 1441 (c) permits removal,

"Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes, the entire case may be removed and the district court may determine all issues therein, or, in its descretion, may remand all matters not otherwise within its original jurisdiction."

32. It is clear that by virtue of some other explicit grant of jurisdiction such the Family Support Act P. L. 100-485, 42 U.S.C. § 667 and its implementation and federal control and regulation, that removal of the entire case was appropriate and since Petitioner needed to have his proper level of child support obligation determined in a lawful manner, that there must be a consideration of the income, assets, expenses and liabilities of both parents and the needs of the children. Petitioner's assets include an undistributed award of marital property - which was recognized for Irishman O'Brien but not for Negro Hodge in the New York State Court - so Petitioner has an equal civil right in the realization of that asset. A jury shall decide whether Petitioner so deserves such a distrubitive award for having supported Defendant Monica J. Applewhite, M.D., at a level of $2000, without a court order, throughout her medical school and half of her residency training, including the support of her two sons, issue of her previous marriage.

33. (a) The civil rights cases removal under 28 U.S.C. § 1443 permit removal in state actions,

"(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of the United States, or of all persons within the jurisdiction thereof; (2) For any act under color of authority

derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

34. Petitioner is perennially denied or could not enforce visitation a constitutionally guaranteed Liberty Interest as prescribed in the 14th Amendment and the equal protection of the laws providing such visitation, Family Court Act section 651 (b). ***Meyer vs. Nebraska,*** 262 U.S. 390 (1923). Neither could Petitioner enforce and was completely denied the equal civil rights under 42 U.S.C. § 1981 to give evidence (as the white lawyer Paul KKK. **"Auschwitz"** Isaac, Esq., could present falsities and outrightly commit crimes before his co-conspirator Erie County Family Court Judge James H. **"Shillelagh"** Dillon) and to have the full and equal benefits of all laws and proceedings for the security of persons and property. The documentary proof of that denial is that Petitioner was falsely incarcerated, first, as a result of a corrupt kangaroo proceeding and, secondly, by the conspiratorial prostitution and denial to the Petitioner of the right of removal pursuant to 28 U.S.C. §§ 1441 (a), (b), (c) and 1443 (1) and (2).

35. It is clear that as part of the Family Support Act, a support order determination is made in accordance with federal law pursuant to P. L. 100-485, 42 U.S.C. § 667 et seq. It is also clear from Section 1443 (2) that the **"refusal to act"** clause would adequately assure right of removal to at least a public employer, and perhaps to a private employer, when as in the instant case, this Petitioner has absolutely declined to observe state requirements (New York State Education Commissioner Thomas Sobol's psychiatric counselling even if Petitioner passes a psychiatric examination Order) that Petitioner believes are inconsistent with (13th Amendment) obligations imposed on this Petitioner by a (18 U.S.C. § 1581) federal law protecting equal rights. Therefore, Petitioner as a private employer - self-employed as a locum tenens emergency room physician, working on a 1099 - could even arguably be sufficiently qualified as an agent of the state so as to be considered as one of its officers for purposes of civil rights removal among the class of defendants entitled to invoke removal under § 1443 (2). It may be a novel insight into

the possible application of that provision of the statute.

36. Petition for removal is analogous to any pleading where a defendant can plead general denial that he violated or proposed to violate state law, together with the affirmative defense that if he did so (violate state law, that Education Commissioner Thomas Sobol Order) Petitioner's refusal to obey state law was justified by Petitioner's duty to refrain from violating federal civil rights laws (the Thirteenth Amendment, 18 U.S.C. §§ 1581, 1583 and 1584). For a defendant in state court to be able to **"predict"** that he will inevitably be denied his equal civil rights by continuation of state prosecution so as to warrant removal to federal court, defendant must and did assert that the state court will not enforce his rights and the allegations must be and were supported by reference to state statute or constitutional provisions or authorized decision or order or policy - psychiatric counselling even if Petitioner passes a psychiatric examination - that purports to command state courts to ignore the federal rights.

37. Even if the magistrate upon the consent of the parties had ordered or recommended a remand or the denial of a motion to vacate an unlawful remand, it would be without legal effect and null and void ab initio, since United States Magistrate Judge Edmund F. Maxwell could at best only do what he is now doing in his so-called **"Report and Recommendation,"** namely, recommend a remand to the Article III Judge.

WHEREFORE, Petitioner summarily objects to the absolutely false statements of law by the bench as regard to the removal rights of this Petitioner and as are contained in the so-called **"Report and Recommendation,"** of United States Magistrate Judge Edmund F. Maxwell, because the statements are clearly erroneous and blatantly contrary to law, and United States Magistrate Judge Edmund F. Maxwell, even maliciously misapplied law and conjured up facts in order to cover-up the corruption and criminality of the multiple defendants, as Petitioner meticulously alleged in this parallel and simultaneous, civil and criminal proceeding.

OBJECTION # 5

Warrants Must Be Issued And Indictments Handed-Up By The Grand Jury Against United States Magistrate Edmund F. Maxwell As A Principal In The Conspiracy By Defendant Erie County Family Court Judge James H. Dillon And Co-Conspirator Paul K. Isaac, Esq., To Falsly And Did In Fact Unlawfully Incarcerate The Petitioner.

38. Congress cannot be imputed with the intent to authorize a United States Magistrate Judge to assist in carrying out the objectives and aims of a criminal conspiracy concocted to damage the personal and professional reputation of an innocent citizen in contravention to settled common law principles, the Constitution of the United States and the administration of justice.

39. It is clear from the admissions on the record that United States Magistrate Judge Edmund F. Maxwell didn't even read the **Verified Civil Suit In Equity Complaint,** let alone the exhaustive State Court Record, having the documentary proof of the unlawful and felonious conduct committed by all the Defendants and most reprehensibly by the Dillon & Isaac Kangaroo so-called contempt & commitment state court abomination and transmogrification of justice.

40. It was part of the racist script for the United States Magistrate Judge Edmund F. **"play dumb"** Maxwell to join into the racist conspiracy pretending (AP 115-117) that the removal Petition, which was docketed on January 25, 1993 was not before him, exclaiming that,

> **"I do not have any such Petition, and I do not feel that anything like that is before me at this particular time. (AP 115-116) I'm not going to entertain it at this particular time, because it was filed on January 25th."**

41. And co-conspirator United States Magistrate Judge Edmund F. **"play dumb"** Maxwell reiterated the same incredulous scheme in his so-called **"Report and Recommendation,"** as if repetition expands reliability, especially in the printed form, that,

> **"In addition to the original petition in this action, Dr. Hodge filed another pleading titled "Supplemental Verified Petition for Removal of a Civil Proceeding for the State Courts . . .," entered under Docket Entry 13. As explained at oral argument, I will not consider it at this time as it appears to be**

nothing more than a challenge to Judge Acara's earlier remand of the Case No. 92-CV-794 to the state court." (AP 147-148)

42. That asinine proclamation is wholly irrelevant to the fact that a renewed right of removal pursuant to ancient case law, ***Powers vs. Chesapeake,*** supra, and the 1949 revision of the procedure for removal statute 28 U.S.C. § 1446 (b), makes the renewed and revived 30 statute of limitations a new option as that need arises, as often as it should so arise, and as often as the case so warrants as set forth again in the following clarification of the revision:

"The second paragraph of the Amendment to subsection (b) is intended to make clear that the right of removal may be exercised at a later stage of the case if the initial pleading does not state a removal case but its removability is subsequently disclosed. This is declaratory of the existing rule laid down by the decisions. (See for example Powers vs. Chesapeake & O. Ry. Co., 18 S.Ct 264; 169 U.S. 92 (January 10, 1898)."

43. Conspirator Defendant Paul K. Isaac, Esq., is wont to elaborating his ridiculously false and grandiose edicts, for example, that,

"Judge Maxwell specifically denied his [Petitioner's] motion to vacate the remand of December 24th and, also, struck down his [Petitioner's] supplemental petition for removal." (AP 133)

44. The only thing that soon to be Defendant United States Magistrate Judge Edmund F. Maxwell shall have struck down is his own career and he will be soon doing some time in the Federal Penitentiary along with his co-conspirators, Elfvin, Arcara, Dillon and Isaac.

45. Who, but a psychopathic scoundrel and criminal, would - contrary to fact and law - mete out four months of imprisonment on an already viciously victimized Black physician/attorney, who as the record established, was unjustifiably precluded from the lawful practice of both his professions, and bludgeoned into bankruptcy by a corrupt state and federal bureautic machine?

46. Most notably, in a vigilante, eye-for-an-eye, socio-political system, where anarchy prevails, that psychopathically jealous, criminal Defendant Erie Coounty Family

Court Judge James H. Dillon, would be killed in retribution for the under color of law violence he committed against this Petitioner from the bench, as his corrupt Federal and State colleagues assisted and applauded, in the fashion of the Rodney King abomination and national disgrace. Race hate, professional jealousy and fear of socio-economic competition is the bane of the Black individual - and specifically the Black male - seeking upward mobility in modern America.

47. Arguably, even in our scientific democracy, socio-pathologic scoundrel, criminal Defendant Erie County Family Court Judge James H. Dillon, might deserve the electric chair, gas chamber or lethal injection, were those in place in the State of New York. But even then, those forms of justice would be ineffectual where, as in the instant situation, the corrupt New York State judiciary-executive, pseudo-aristocracy shields and protects the putrid fruit of its womb: Witness, KKKuomo appointee and crony Sol Wachtler, who will probably not spend a day in jail, under the contorted rationale that his precipitous and steep fall from grace, forfeiting his most ambitious last bid for glory in the governorship - even at the expense of the very causes he pretended to be furthering - was punishment enough. The Black Messiah has spoken.

WHEREFORE, Petitioner summarily objects to the fact that No Warrants have been issued, but warrants Must Be Issued And Indictments Handed-Up By The Grand Jury Against United States Magistrate Edmund F. Maxwell As A Principal In The Conspiracy By Defendant Erie County Family Court Judge James H. Dillon And Co-Conspirator Paul K. Isaac, Esq., To Falsly And Did In Fact Unlawfully Incarcerate The Petitioner.

Dated: April 15, 1993
Alden, N.Y.

Daniel R. Hodge, M.D., J.D.
Erie County Correctional Facility
Box X C-108, Alden, N. Y. 14004

United States Court of Appeals
for the Second Circuit
Clerk of the Court
Elaine Goldsmith
Foley Square,
New York, N.Y. 10007

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THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Daniel R. Hodge, M.D., J.D., et al.,
Petitioner,
-vs- 92-CV-835 A; 92-CV-794 A
PETITION FOR A WRIT OF MANDAMUS
Richard J. Arcara, U.S.D.J.,
John T. Elfvin, Sr. U.S.D.J.,
John T. Curtin, Sr. U.S.D.J.,
David G. Larimer, U.S.D.J.,
William M. Skretny, U.S.D.J.,
Michael A. Telesca, Chf. U.S.D.J.,
Edmund F. Maxwell, U.S.M.J.,
James H. Dillon, F.C.J.,
Sharon S. Townsend, F.C.J.,
Majorie C. Mix, F.C.J.,
Anthony P. LoRusso, F.C.J.,
John F. O'Donnell, F.C.J.,
Sol Wachtler, Ex-Chf J., NYS Ct. of App.,
Monica J. Applewhite, M.D.,
Paul K. Isaac, Esq.,
Richard Bernhard, Esq.,
Defendants.

Petitioner Daniel R. Hodge, M.D., J.D., makes this application for a **WRIT OF MANDAMUS** pursuant to Rule 21 of the Rules for Appellate Procedure, by alleging as follows:

Jurisdiction

1. That jurisdiction is conferred by 28 U.S.C. §§ 1651, 1657, 1446 (c)(5), (d), (e), 455 (a), the March 4, 1988 Decision and Order of Michael A. Telesca, in ***Marylou Weppner vs. Edwin Meese III***, and the holdings in ***Mireles vs. Waco***, 112 S. Ct. 285 (1991), ***Stump vs. Sparkman***, 435 U.S. 349 (1978), and ***Bradley vs. Fisher***, 20 L. Ed 646 (1872), and 18 U.S.C. § 1514 (b)(3), (4);

(Proof is found sequentially numbered in the attached Appendix and denoted by prefix "AP," and also there is the included separate document and conglomeration entitled **Notice of filing of the Supplemental Verified Petition for Removal of a Civil Proceeding from the New York State Courts, which shall Proceed no further, pursuant to 28 U.S.C. §§ 1441, 1443, 1446 (b), (e), etc.**)

Questions Presented

(1) Whether all the Defendant United States District Judges for the Western District of New York were and still are required, as a matter of law, to summarily disqualify themselves from hearing the instant case, based on the proscriptions operative pursuant to 28 U.S.C. § 455 (a), and the March 4, 1988 Decision and Order of Michael A. Telesca, in ***Marylou Weppner vs. Edwin Meese III?***

(2) Whether the Defendant New York State Erie County Family Court Judge James H. Dillon was divested of **"all jurisdiction"** on January 25, 1993, to perform any **"judicial act"** with regard to the Petitioner - least of all - to incarcerate Petitioner?

(3) Whether the Defendant New York State Erie County Family Court Judge James H. Dillon because of his complete **"absence of all jurisdiction"** within the meaning of standards established in ***Mireles vs. Waco***, 112 S. Ct. 285 (1991), ***Stump vs. Sparkman***, 435 U.S. 349 (1978), and ***Bradley vs. Fisher***, 20 L. Ed 646 (1872), is therefore deprived of judicial immunity from suit in his person for general and punitive damages under 42 U.S.C. § 1983, for the unlawful incarceration of Petitioner?

(4) Whether pursuant to Federal Rules of Criminal Procedure Rule 3, 4 (a), (b), and 6 (f) indictments should be found, returned and handed up against the various Defendants as alleged in the simultaneous and parallel civil and criminal proceeding under 92-CV-835 A; 92-CV-794 A?

(5) Whether the Defendant New York State Erie County Family Court Judge James H. Dillon because of his

reprehensible judicial conduct should be disciplined in some appropriate fashion and be impeached and removed from office?

Statement of the Facts

2. The visitation and support matters (the first two cases in that caption) had been removed from New York State Erie County Family Court pursuant to 28 U.S.C. §§ 1441 (a), (b), (c), 1443 (1), (2), and 1446 (b), (e) to the United States District Court for the Western District of New York on November 30, 1992. (See, AP 5, docket sheet item 1, 92-CV-794 A). The matters were unlawfully remanded sua sponte on December 24, 1992, (and the case **"closed"**) by Defendant United States District Judge Richard J. Arcara, as being **"untimely"** purportedly grounded on the so-called **"initial pleading"** pretextual and malicious misconstruction of 28 U.S.C. § 1446 (b).

3. Defendant United States District Judge Richard J. Arcara - cited only the first paragraph as being pertinent to the facts of the case procedurally, but ulteriorly and under color of law (42 U.S.C. § 1983, 18 U.S.C. § 242) purposely omitting the appropriately applicable, and to the Petitioner, the beneficial attributes of the second paragraph - which spontaneously revives the 30-day statute of limitations - when **"an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable,"** is served on the Defendant.

4. On December 18, 1992 - a week before the unlawful remand - Petitioner commenced a simultaneous civil and criminal parallel proceeding against multiple State and Federal Judicial Officers, attorneys and a Black client - the ex-spouse of the Petitioner - in the United States District Court for the Western District of New York, under Docket # 92-CV-835 A, (entitled the **Verified Civil Suit In Equity Complaint** AP 6) which was - unlawfully for reasons that will be most obvious - referred by United States District Judge Richard J. Arcara to the United States Magistrate Judge Edmund F. Maxwell on December 30, 1992, pursuant to 28 U.S.C. § 636 (b)(1)(A), (B), (C) and urging consent under (c). (See Local Rule 29 and 30, for the Western

District of New York; also ***Pacemaker Diagnostic Clinic of America vs. Intromedix,*** 725 F. 2d 537 (1984); ***Collins vs. Forman,*** 729 F. 2d 108 (1984); District of Columbia Rule 502 (b) . . . **"Neither the judge to whom the case is assigned nor the magistrate shall request or urge that a party or parties consent to such an assignment."**

5. There was, however, the far more crucial matter of **impropriety,** let alone the **appearance of impropriety** to be faced by the entire Federal bench in the Western District of New York, in light of the March 4, 1988 **Decision and Order** of Defendant United States District Judge Michael A. Telesca with regard [sic to] the disqualification of all the Defendant United States District Judges - when any one of them is a party to an action - particularly and specifically because of a case involving the very same Defendant United States District Judge Richard J. Arcara - still now assigned to this case - who nevertheless knowingly and intentionally **"assumed administration"** of the case, by his sua sponte, unlawful remanding of the removed matters on December 24, 1992, and on December 30, 1992, in continuation of that very same pattern of unlawful conduct, referred the parallel and simultaneous civil and criminal proceeding to the Defendant United States Magistrate Judge Edmund F. Maxwell.

6. The precedent with regard to the mandatory disqualification of all Defendant Western New York United States District Judges pursuant to 28 U.S.C. § 455 (a) was established in an action by Plaintiff Marylou Weppner, a Schedule C Secretary and Confidential Assistant of now Defendant United States District Judge Richard J. Arcara, then a prospective United States District Judge, but still United States Attorney for the Western District of New York. See ***Marylou Weppner vs. Edwin Meese III, as Attorney General of the United States,*** CIV-86-194 T. (AP 1-3) which involved allegations of **sex discrimination and retaliatory discharge** of Plaintiff Marylou Weppner. Defendant United Stated District Judge Michael A. Telesca, now Chief Judge, concluded on March 4, 1988, that his own recusal as well as the disqualification of all the United States District Judges of Western New York was proper, but that the case need not be

assigned to a judge outside of the jurisdictional domain of the Second Circuit.

7. It is therefore most obvious that not only was Defendant United States District Judge Richard J. Arcara **abinitio** very much aware of his very own past personal **"Marylou Weppner mandatory recusal"** predicament, in a situation where his recusal was again mandatory - as a matter of law - but he wilfully, maliciously and unlawfully remained on the case - even though his bench colleague Defendant United States District Judge John T. Elfvin was a party to this parallel civil and criminal proceeding. In fact, it was only after Petitioner filed the simultaneous and parallel civil and criminal proceeding on December 18, 1992 that Defendant United States District Judge Richard J. Arcara - six days later, hurriedly on December 24, 1992, pulled off his sua sponte unlawful remand, to commit an act in furtherance of the objective of the State conspirators to unlawfully incarcerate the Petitioner without due process being had in the United States District Court. And exactly what was the need for the hurried unlawful remand by Defendant United States District Judge Richard J. Arcara? Well, the record shows that it was to help out the State Court Defendants to carry out the racist conspiracy to incarcerate the Petitioner: According to local court statistics and report from the Administrative Office of the United States Courts, Defendant United States District Judge Richard J. Arcara has the most cases pending of all his Co-Defendant Judicial Officer colleagues on the bench with 559: Defendant U.S.D.J., William M. Skretny has 453, Defendant Sr. U.S.D.J., John T. Elfvin, has 340, and Defendant Sr. U.S.D.J., John T. Curtin, has 262.

8. And as if the sua sponte and unlawful remand scheme and refusal to disqualify himself and all other United States District Judges were not bad enough, United States District Judge Richard J. Arcara, nevertheless, unlawfully remanded this matter - using precisely the same ploy and under color of law, conspiratorial scheme - of omitting the second paragraph of 28 U.S.C. 1446 (b), as did Defendant United States District Judge John T. Elfvin on August 29, 1991, the very same reason why Defendant United States District Judge John T. Elfvin became a

defendant in the first instance.

9. On January 4, 1993, Petitioner, recognizing the futility of this racist transmogrification of justice, took three separate, wholly lawful and appropriate procedural courses, to counter the unlawful, conspiratorial and consecutive schemes of the two United States District Judges, Elfvin and Arcara as follows:

(1) consolidated two orders of Erie County Family Court: (a) the sua sponte, unlawfully **"remanded"** (92-CV-794 A) November 2, 1992 **Order of Disposition** (which was concocted by Defendant Erie County Family Court Judge James H. Dillon, who in a wholly perverted scheme had **"found"** Petitioner guilty of the **"wilful and intentional" violation of an Order of Support**) and (b) an October 15, 1992 **Order of Disposition** (made by Defendant Erie County Family Court Judge Sharon S. Townsend, who - in a similarly unlawful ploy - had, under the pretext of being **"one day late,"** denied Petitioner's September 11, 1992 **Objection** to Defendant Hearing Examiner Marjorie Mix's **Order of Disposition** dated August 11, 1992) already on appeal since November 2, 1992 in the New York State Supreme Court Appellate Division, Fourth Department;

(2) made an application for a **Stay** of the November 2, 1992 and the October 15, 1992 **Orders of Disposition** of the Erie County Family Court pending the prosecution of the consolidated appeal, in the New York State Supreme Court Appellate Division, Fourth Department, better known as the Dillon-Dynastic "old **boys"** club; and

(3) made an **Ex Parte Motion** (See Part II of the Document entitled **Notice of Filing of the Supplemental Verified Petition for Removal of a Civil Proceeding From the New York State Courts, which shall Proceed no Further etc.**) before both the Defendant United States District Judge Richard J. Arcara and Defendant United States Magistrate Judge Edmund F. Maxwell to vacate the **sua sponte unlawful remand** and to consolidate both the removed-and-the-factually-connected **Verified Civil Suit In Equity Complaint** pursuant to F.R. Civ. P Rule 42 (a), i.e., 92-CV-794 A (item 4) (AP 5) and 92-CV-835 A (item 6) (AP 8). No action by the District Court was ever taken with regard to that **Ex**

Parte Motion, (the classic old pocket veto technique used to smother politically potent controversy) to this very day as the docket sheets reflect and as a practical matter - stayed any State Court action.

10. On January 19, 1993, the New York State Supreme Court Appellate Division, Fourth Department, most expectedly, denied Petitioner's motion for a **Stay** of the **Orders of Disposition** of the Erie County Family Court pending the review of the consolidated State appeal, and also denied the opposing counsel's motion seeking the dismissal of the consolidated State appeal (See Exhibit #1 and 2, in the **Notice of Filing of the Supplemental Verified Petition for Removal etc.)** In essence the New York State Supreme Court Appellate Division, Fourth Department - the old boys club, where the late uncle of the Defendant Family Court Judge James H. Dillon, ordering the unlawful commitment, was the Presiding Justice - declared that the consolidated appeal would be **"heard"** but must be prepared from behind the prison walls - away from papers and records, and of course, to continue the campaign of personal and professional degradation and denigration of the Petitioner: The only objective of the whole corrupt and racist scheme.

11. On January 21, 1993, Petitioner filed a **Cross-Motion from Summary Judgment** (item 5. AP 5. in 92-CV-794 A and item 11, AP 8, in 92-CV-835 A: Found in Part I of the Document entitled **Notice of Filing of the Supplemental Verified Petition for Removal of a Civil Proceeding From the New York State Courts, which Shall Proceed no Further etc.**). The several claims on their face revealed that Petitioner had presented matters in the United States District Court - which the New York State Erie County Family Court has no jurisdiction to hear - particularly the malicious prosecution to **"terminate paternal rights,"** of this Petitioner where liability is **ab initio** established as a matter of law, by a dismissal of the action where no probable cause to commence the action is documentary - and the jury issue is solely the measure of damages, to be sure more than $16,500.

12. On January 25, 1993, again pursuant to 28 U.S.C. 1446 (b) - the second paragraph, Petitioner removed the January 19, 1993 denial of the **Stay Order** which was issued by the New

York State Supreme Court Appellate Division, Fourth Department and the letter from apposing counsel (See Exhibit #1 and 2, in the **Notice of Filing of the Supplemental Verified Petition for Removal etc.**) as being **"an Order and Other Paper from which it may first be ascertained that the case is one which is or has become removable,"** because Petitioner could still not enforce and was continually **being denied** Petitioner's **equal civil rights** under the provisions of the **Child Support Standards Act. The Notice of Filing of the Supplemental Verified Petition for Removal of a Civil Proceeding From the New York State Courts, which Shall Proceed no Further etc.,** was filed under both docket numbers 92-CV-794 A, item 6, AP 5, and 92-CV-835 A, item 13, AP 8).

13. On January 27, 1993, Petitioner being quite aware of the malicious aims of the conspiracy on and before the State and Federal Court benches to unlawfully incarcerate the Petitioner, and that the State and Federal Judicial Officers would violate Petitioner's removal rights, as they have always done in the past, then also filed (item 7, AP 5; item 15, AP 9) an **Affidavit and Supplemental Notice of Cross-Motion for a Preliminary Injunction** (See **Affidavit in Support of the Cross-Motion** attached hereto as AP 10-14) returnable on January 28, 1993, as **"insurance,"** knowing it would be ignored from the words of the secretary to the Defendant United States Magistrate Judge Edmund F. Maxwell, who said that no **Order to Show Cause** would be signed by him and that such a motion for a **Preliminary Injunction** could be made **"orally"** during the oral argument of the Cross-Motion for summary judgment, already scheduled for the following day on January 28, 1993 at 10:00 a.m.That direction by the Defendant United States Magistrate Judge, Edmund F. Maxwell, through his secretary that it was procedurally proper to make an **"oral Preliminary Injunction Motion,"** of course, like so many other false statements of law and facts made by the Defendant United States Magistrate Judge, Edmund F. Maxwell, is absolute nonsense. The evasive procedural scheme was the ludicrous foundation upon which an argument is being made by Defendant Paul K. Isaac, Esq. that, **"as a result of the Plaintiff's failure [not the Magistrate's evasive magisterial & criminal ploy]**

to have his motion properly placed on the calendar Magistrate Maxwell declined to hear it, stating it was not properly before him at that time." (AP 38). Of course not, since Defendant Magistrate Edmund F. Maxwell was, and is, part of the unlawful scheme to incarcerate a Negro who exposed the corrupt and criminal Defendant Sol Wachtler-run New York State Judiciary aristocracy.

15. On January 28, 1993, in the proceeding before the Defendant United State Magistrate Judge Edmund F. Maxwell, not at all surprisingly, he pretended - despite the referral Order's authority granted to him in 28 U.S.C. § 636 (b) (1) (B) and (C) - that neither the **Preliminary Injunction Motion** nor the **Supplemental Verified Petition for Removal of a Civil Proceeding From the New York State Courts, which Shall Proceed no Further etc.,** were **"before"** him. As a practical matter it made no difference, because as long as Defendant United State Magistrate Judge Edmund F. Maxwell, could not again sua sponte from the bench remand the consolidated matter, (which he lawfully cannot do under 28 U.S.C. § 636 (b) (1)(B) and (C) - only recommend remand to the Article III Judge) the New York State Court could not lawfully proceed any further under 28 U.S.C. § 1446 (e), even despite the Defendant Magistrate's **"feigned ignorance"** in his statement that **"I do not believe that it is an appropriate method of doing it."** (See AP 28 and AP 118-124), the attached pertinent portion of the transcript of the January 28, 1993, 10:00 a.m., proceeding where that **"opinion"** was recorded for all posterity). But needless to say, the corrupt bench - whether State or Federal in Western New York - flagrantly ignores congressional enactments and makes its very own little rules and regulations and does anything it very well pleases, even in the **"clear absence of all jurisdiction,"** in the most lucid abrogations of law, like **"the sun shining in full blaze on the open eye."**

16. On January 28, 1993, at the scheduled **"incarceration time"** of 2:00 p.m., the Defendant New York State Erie County Family Court Judge, James H. Dillon even after being given a copy of the United States District Court docket sheet (AP 4-9, are later versions of the docket sheets) clearly revealing that the **Supplemental Verified Petition for Removal,**

was not remanded, the Defendant Erie County Family Court Judge, James H. Dillon nevertheless, as part of the rapacious criminal scheme then **"assumed jurisdiction"** (AP 135-136) and direct the peace officer to take the Petitioner into custody to serve 4 months in Erie County Correctional Facility, using the pretextual arguments made by his Co-Defendant counsel Paul K. Isaac, Esq., allegedly based on the incomplete, taken out of context segment of the transcript (AP 22-29, rather than the full transcript AP 48-125) before the Defendant United States Magistrate Judge Edmund F. Maxwell - which incomplete and misleading segment was specifically and hurriedly prepared for the occasion, to **"justify"** their collective conspiratorial and unlawful conduct. Regardless, the Defendant United States Magistrate Judge Edmund F. Maxwell could ad nauseam **only recommend remand. Unlawfully incarcerating an innocent citizen, under color of law and in a conspiracy in violation of 18 U.S.C. §§ 241 and 242, is not merely a precatory civil infraction but an offense against the penal laws of the United States - from which, moreover, there is no escape under "judicial immunity"** cloaks, as is proscribed in the seminal cases **Mireles, Stump and Bradley,** when a judge performs even a **"judicial act"** that was taken in **"complete absence of all jurisdiction."**

17. The nature of the proceeding had before the Defendant United States Magistrate Judge Edmund F. Maxwell on January 28, 1993, at 10:00 a.m. must be micro-scrutinized for vestigial elements of "jurisdiction" now that the full transcript (AP 48-125) of the proceeding became available to Petitioner (AP 47) on March 18, 1993 and is attached hereto; also the transcript (AP 127-136) of the proceeding before Defendant Erie County Family Court Judge James H. Dillon, which became available (AP 126) on March 13, 1993, is also attached hereto. These transcripts can now be used to documentarily establish as a matter of law, that most crucial element and **second prong of "clear absence of all jurisdiction"** judicial immunity inquiry as it pertains to this case, and as is espoused in the present standards according to ***Mireles vs. Waco,*** 112 S.Ct. 286 (1991), ***Stump vs. Sparkman,*** 435 U.S. 349 (1978), and ***Bradley vs. Fisher*** 20 L. Ed 636 (1872).

18. It is clear beyond cavil that - although there is no such requirement to **"take leave of court"** for permission to file a motion for a **preliminary injunction** - Defendant United States Magistrate Judge Edmund F. Maxwell, had nevertheless, most symbolically **"given"** Petitioner permission to file the Supplemental Cross-motion by Plaintiff for a **Preliminary Injunction** as the transcript reveals on page 4-5, (AP 51-52) that is to say, that,

> **"My office received a call from Dr. Hodge, I believe requesting some type of a show cause order. He was advised by my chambers that in view of the fact that this matter was to be returnable this morning, that if he wished to file any papers, he could do so. But the Court would make a determination today as to what, if any, further action would be taken on those papers."** (emphasis supplied)

19. The **"call from Dr. Hodge"** regarding the **Order to Show Cause,** was made on January 26, 1993, but most self-confusingly, Defendant United States Magistrate Judge Edmund F. Maxwell, started to read off a partial role call of documents that he ostensibly **"believed"** to be before the court, that is to say, that, **"copies were, I believe, mailed on January 25th to, I believe all of the Defendants who have appeared, or all the counsel who are appearing here . . ."** (AP 52), referring, of course, to that most crucial January 25, 1993 **Notice of Filing of the Supplemental Verified Petition for Removal of a Civil Proceeding from the New York State Courts, Which Shall Proceed No Further etc...** but ignoring the redundant other powerhouse backup, namely, that January 27, 1993 **Supplemental Cross-motion by Plaintiff for a Preliminary Injunction.**

20. Defendant Erie County Family Court Judge Dillon very well knows or should have known that Defendant United States Magistrate Judge Edmund F. Maxwell, at best pursuant to 28 U.S.C. § 636 (b) (1) (B) and (C), could only submit proposed findings and recommendations of his magisterial - and perhaps even ministerial - decision on dispositive motions to an Article III Judge - that is to say, Defendant United States District Judge Richard J. Arcara, assuming even arguendo that Defendant United States District Judge Richard J. Arcara were not required to disqualify himself pursuant to ***Marylou Weppner vs. Edwin***

Meese III.

21. Defendant United States Magistrate Judge Edmund F. Maxwell, at best pursuant to 28 U.S.C. § 636 (b)(1)(B) and (c), could even have instantaneously from the bench **"recommended remanding,"** and even then Petitioner would still - ten (10) days after being served with a written copy of Defendant United States Magistrate Judge Edmund F. Maxwell's proposed findings and recommendations - have had the opportunity to file potent and powerful objections to those proposed findings and recommendations. There were, in fact, five (5) properly filed and docketed submissions of the (AP 4-9) Petitioner before the United States Magistrate Judge, poised for his proposed findings and recommendations, to wit:

(1) The December 18, 1992, Verified Civil Suit In Equity Complaint, etc., simultaneous and parallel, civil and criminal proceeding, 92-CV-835 A, item #1, (AP 8) and referred pursuant to 28 U.S.C. § 636 (b) (1)(B) and (C) to Defendant United States Magistrate Judge Edmund F. Maxwell;

(2) The January 4, 1993, Motion to consolidate 92-CV-794 A, item #4 (AP 5) and 92-CV-835 A, item #6 (AP 8) and Ex Parte motion to vacate the Order remanding to State Court;

(3) The January 21, 1993, Cross-Motion for Summary Judgment 92-CV-794 A, item #5 (AP 5) and 92-CV-835 A, item #11 (AP 8);

(4) The January 25, 1993, Notice of Filing of the Supplemental Verified Petition for Removal of a Civil Proceeding from the New York State Courts, which Shall Proceed No Further Pursuant to 28 U.S.C. 1441, 1443, 1446 (b), (e), etc., 92-CV-794 A, item #6 (AP 5) and 92-CV-835 A, item #13 (AP 8);

(5) The January 27, 1993, Supplemental Notice of Cross-Motion for a Preliminary Injunction Motion, 92-CV-794 A, item #7, (AP 5) and 92-CV-835 A, item #15 (AP 9).

22. But nothing stops a **"northern liberal"** white racist criminal conspiracy fomenting on and before the benches of the Western New York State and Federal Courts, in the modern era of the High Technology of Black Oppression. Adherence to the substantive provisions of the removal statute 28 U.S.C. § 1446 (b) and (e) or the referral statute 28 U.S.C. § 636 (b)(1)(B) and (C), and the administration of justice - and even the preservation of judicial immunity from suit, under holdings of the seminal cases

of ***Mireles, Stump*** and ***Bradley***, as it pertains to that second prong of **"clear absence of all jurisdiction"** - was contrary to the malicious and unlawful, in fact, criminal aims of the Defendants United States Magistrate Judge Edmund F. Maxwell and Erie County Family Court Judge Dillon and their Co-Defendant Paul K. Isaac, Esq., who could not delay for another orgasmic moment what had been the only objective of the three-year-long racist scheme to destroy a Black man, in whose shoes neither of them could thread. What will they now do for another criminal encore?

23. Defendant Paul K. Isasc Esq., throughout the State Court proceeding, and in all the Records and in his work-products, made false statements as typically in the following declaration on page 7 of the transcript (AP 133) in the Erie County Family Court,

"Your Honor, with regard to the preliminary injunction that Dr. Hodge refers to, yesterday, Walter Jones, who works with Dr. Hodge served me with certain applications in support of a cross motion by the plaintiff for preliminary injunction returnable this morning in Federal Court, which motion was denied because Dr. Hodge never filed those with the court. There is no preliminary injunction in effect. This application was to prevent me from going forward this afternoon with this proceeding. He petitioned the court but never had those documents filed in the Federal Court and there is no Order before this Court enjoining it from proceeding any further as Judge Maxwell specifically denied his motion to vacate the remand of December 24th and, also, struck down his supplemental petition for removal. This action must proceed, today, Your Honor." (Emphasis supplied)

24. Those flagrant lies in no way even merit the euphemism of **"false statement of facts,"** and it is most obvious from the record that the ploy was the final goal of a three-year-long criminal scheme and a most predictable act in furtherance of this reprehensible racist conspiracy - over which all the Defendants are now gloating. But at some point, when justice shall have been had, and this criminal hoax is revealed to the whole wide world, the Defendants, like their Co-Defendant Sol Wachtler, will be spending a lot more that four months in a Federal Penitentiary.

REASONS WHY THE WRIT SHOULD ISSUE

POINT I

The Writ should Issue To Direct That All United States District Judge's For the Western District Of New York, As A Matter Of Law - Summarily Disqualify Themselves - From Hearing The Instant Case, Based On The Proscriptions Operative Pursuant To 28 U.S.C. Section 455 (a), And The March 4, 1988 Decision And Order Of United States District Judge Michael A. Telesca, In Marylou Weppner vs. Edwin Meese III.

25. This Court of Appeals for the Second Circuit, in the administrative jurisdictional domain of Mr. Justice THOMAS, must now act upon and do what the Clerk of the Supreme Court has improperly refused to even present (AP 45-46) to Mr. Justice THOMAS, for his interim action.

26. William K. Suter, Clerk of the Supreme Court of the United States by his Assistant Clerk, Cynthia Rapp, attempted on March 15, 1993 (AP 46) and again on March 30, 1993 (AP 166-170) to misguide this physician/attorney, in this era of the High Technology of Black Oppression, with the totally false assertion that,

> **"This Court does not grant indictments nor does it enter default judgements. In addition, this Court does not order jury trials."**

27. The reality is that Congress has granted Federal Court such judicial power as is provided to the Supreme Court of the United States pursuant to 28 U.S.C. § 1651, to wit.

> **"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction."**

28. Moreover, 28 U.S.C. § 2106 provides that,

> **"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside, or reverse any judgment, decree or order of a court lawfully brought before it for review, and may remand the cause and direct entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."**

29. **It is most obvious that such "further proceedings,"** may include a jury trial or referral to a grand jury to hand up

indictments.

Furthermore, according to Charles Alan Wright,

"There is no doubt that, to protect its appellate jurisdiction, the Supreme Court can issue a writ, even before a case has come to it, to a court of appeals, or to a district court in a case that is reviewable directly in the Supreme Court, although there may be sharp differences of view as to the propriety of exercise of this power in a particular case." Law of Federal Courts, Charles Alan Wright, p. 762, West Publishing Co., (1983).

30. It is not unreasonable to expect direct intervention ad interim by Mr. Justice THOMAS, in the instant situation involving a common nucleus of operative facts, where there is the most reprehensible assortment of rampant ethnocentric white racism, corruption and outright criminality on and before the **"Liberal Northern"** State and Federal Court benches - in essence and substance far more pernicious than anything that was characteristic of the **"old South"** with judicial officers conspiring to unjustifiably and thus unlawfully incarcerate a Black man - one of this nation's finest citizens - out of nothing more than professional jealousy, race hate and fear of economic competition, particularly in the so-called **"higher professions."**

31. It is therefore most appropriate for that one Black man, Daniel R. Hodge, M.D., J.D., [to sic] make an application to another Black man, Mr. Justice THOMAS, a Supreme Court Justice, perhaps with a **"big Black heart,"** who had a very similar Black-on-Black assortment of oppressive experience during his conformation proceeding before the United States Senate Judiciary Committee. Fortunately, because of the concern of many noble citizens of all colors and creeds, justice was had in the end. Perhaps after seven years of oppression this Petitioner may have a similar blessing.

32. Charles Alan Wright, in his finite knowledge but perhaps infinite wisdom, reveals that a Petitioner can take advantage of the fact that,

"An important, but little-noticed, part of practice in the Supreme Court, involves applications to an individual justice for a stay or for other forms of interim action. An individual justice has no power to dispose of cases on the merits, but may make a

variety of interim orders, sometimes of literally life-and-death significance. Ibid. p. 763; See also 16 Wright, Miller & Cooper, Jurisdiction section 4005 n. 55.

33. Those varieties and forms of interim action which an individual justice, with a "**big Black heart,**" can lawfully provide, most surely, could among other things include:

A. The instantaneous entry of the Default Judgment pursuant to F.R.Civ.P. Rule 55 (b)(2) for a Preliminary Injunction for the immediate release of this Petitioner, a matter which is now, as a practical matter, moot - or a Permanent Injunction pursuant to F.R.Civ.P. Rule 65 (a) (1)(2) to prevent further harassment and unlawful re-incarceration ad nauseam, because this civil rights paladin would rather die than capitulate one nanometer to the forces of despotism and ethnocentric white racism;

B. A Protective Order pursuant to 18 U.S.C. § 1514 (b)(3), (4) for three years to prevent further infliction of suffering, degradation and harassment of this victim of retaliatory white-collar crime being committed by those on, before and off the bench and bar, as Petitioner further litigates to clear, retrieve and restore Petitioner's personal and professional intellectual property interests and reputation in the medical and legal establishment, and social community;

C. Referring the simultaneous and parallel civil and criminal matter to be found and returned by the grand jury pursuant to F.R.Crim.P. Rule 4 (a), (b) and 6 (f) to hand up indictments;

D. Providing, where there are genuine issues of material and operative facts, for a trial by jury on the merits before a United States District Judge from outside the Western District of New York, pursuant to the March 4, 1988 Decision and Order of United States District, and now Chief Judge, Michael A. Telesca, in Marylou Weppner vs. Edwin Meese III;

34. Regarding the central POINT, that is to say, the need for judicial officer disqualification, 28 U.S.C. § 455 (a) provides that:

> **Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.**

35. That, to each citizen, is not just the legal posturing of Congress. Moreover, in the Western District of New York, it is very well established, that the disqualification of all district

judges is mandatory even if it involves a Black physician/attorney political dissident, who arguably has more upstairs than 230 million white folk in the Land of the Free and Home of the Brave, and even if he thereby undermines that cow dung doctrine of white supremacy, and even if the white aristocracy perceives that the Petitioner must be destroyed as the goal, in a sempiternal scheme where the State and Federal benches, conspired to unlawfully deprive this Petitioner of his most basic and rudimentary of constitutional and statutory equal civil rights, for seven consecutive years.

36. And this is the most gruesome of all: In the most flagrant violation of the Thirteenth Amendment and peonage statutes, the State and Federal Judicial Officers bludgeoned this Black physician/attorney, in the classic **"Rodney King"** style, with a four-month term of incarceration, as the culmination of a three-year-long criminal conspiracy and white racist **"child support arreage"** hoax. It is a national disgrace!

37. To be sure, the Court of Appeals for the Second Circuit, which has seen the name of Daniel R. Hodge several times on Petitioner's way up to the Supreme Court of the United States, must now - as a matter of law - issue a Writ of Mandamus to the Defendant United States District Judges, Magistrate and State Judicial Officers, that they implement those remedies denoted as A, B, C and D, in this Petition.

POINT II

The Defendant New York State Erie County Family Court Judge James H. Dillon Must Be Issued A Mandate Adjudging That He Was Divested Of Jurisdiction On January 25, 1993, To Perform Any Judicial Act Or To Order Anything - Least Of All - The Unjustifiable And Unlawful Incarceration Of The Petitioner.

38. There is a little doubt in the mind of this Petitioner or as is clear from the seminal case law according to ***Mireles, Stump*** and ***Bradley,*** that based on the conduct on January 28, 1993, at 2:00 p.m., of Defendant New York State Erie County Family Court Judge James H. Dillon, that this Court must uphold the construction that he acted **"in a judicial capacity,"** and would be, of course, protected from suit for general and punitive

damages under and within the contextual meaning of the first prong of the immunity inquiry according to the standards established in ***Mireles vs. Waco*** 112 S.Ct. 286 (1991), ***Stump vs. Sparkman***, 435 U.S. 349 (1978), and ***Bradley vs. Fisher***, 20 L. Ed 646 (1872).

39. According to conventional wisdom, a Judge and a court must - as a practical matter - be vested with the power to force compliance with its Orders; that power is not considered to be executive in nature. ***Mireles vs. Waco***, 112 S.Ct. at 289 (A judge's direction to an executive officer to bring counsel before the court is no more executive in character than a judge's issuance of a warrant for an executive officer to search a home). So, by such definition the power to force compliance with a lawful court order is **"a judicial act"** and a **"judge is absolutely immune from liability for his judicial acts - even if his exercise of authority is flawed by the commission of grave procedural errors."** ***Stump vs. Sparkman***, 98 S.Ct. at 1106.

40. But the sequence of events in the instant case, as are documentarily recorded on the docket sheets under both 92-CV-794 (AP 4-5) and 92-CV-835 (AP 6-9), establish as a matter of law that the Defendant Erie County Family Court Judge James H. Dillon had no jurisdiction as of January 25, 1993, and there was nothing the Defendant United States Magistrate Judge Edmund F. Maxwell could directly and immediately do, regarding the reversion of jurisdiction to the State Courts, other than to indirectly make a recommendation to remand, to an Article III Judge, in this case Defendant United States Direct Judge Richard J. Arcara - if but only, assuming even arguendo he, Defendant United States District Judge Richard Arcara himself, and all other Defendant United States District Judges, were not required to summarily disqualify themselves pursuant to the March 4, 1988 Decision and Order of the then United States District, and now Defendant Chief Judge, Michael A. Telesca, in ***Marylou Weppner vs. Edwin Meese III;***

41. For all the foregoing reasons, it is established as a matter of fact and law that if the removal statute is to have any meaning at all to Defendants as Congress intended, then the

Defendant Erie County Family Court Judge James H. Dillon was divested of, and had absolutely no jurisdiction whatsoever, i.e., there was as regards the Petitioner, **"clear and complete absence of all jurisdiction,"** as of January 25, 1993, at 10:47 a.m., for Defendant Erie County Family Court Judge James H. Dillon to perform any judicial act whatsoever, however, noble or sordid.

POINT III

The Defendant New York State Erie County Family Court Judge James H. Dillon Because Of His Complete "Absence Of [sic All] Jurisdiction" Within The Meaning Of Standards Established In Mireles vs. Waco, 112 S.Ct. 286 (1991), Stump vs. Sparkman, 435 U.S. 349 (1978), And Bradley vs. Fisher, 20 L.Ed. 646 (1872), Is Therefore Deprived Of Judicial Immunity From Suit In His Person For General And Punitive Damages under 42 U.S.C. § 1983, For The Unlawful Incarceration of Petitioner.

42. The Writ should issue to direct that the United States District Judge from another District within the Second Circuit order that the motion for summary judgment against Defendant Erie County Family Court Judge James H. Dillon, pursuant to 42 U.S.C. § 1983, now pending before the District Court be granted and that the matter be sent to the jury for affirmation of Petitioner's assessment of $20 million special damages for mental anguish, suffering, personal humiliation, for unlawful incarceration and the destruction of Petitioner's personal and professional reputation and standing in the community as a result of libelous defamation.

POINT IV

Pursuant To Federal Rules Of Criminal Procedure Rule 3, 4 (a), (b), And 6 (f) Indictments Should Be Found, Returned And Handed Up Against The Various Defendants As Alleged In The Simultaneous And Parallel Civil And Criminal Proceeding.

43. Defendant Erie County Family Court Judge James H. Dillon, and his multiple co-conspirators, to wit, Defendants Elfvin and Isaac and soon to be Defendants Arcara and Maxwell, have documentarily committed acts constituting the offenses against the penal laws of the United States as charged in the Verified Civil Suit In Equity Complaining.

44. The Writ should issue to direct that the United States District Judge from another District within the Second Circuit issue warrants and that referral be made to the grand jury so that indictments be found, returned and handed up against the various Defendants consistent with and as has been alleged in the Verified Civil Suit In Equity Complaint.

POINT V

Defendant New York State Erie County Family Court Judge James H. Dillon because of his reprehensible judicial conduct should be impeached and removed from office.

45. Judges of the New York State Family Court may be removed for cause by the New York State Senate, on the recommendation of the Governor, if two-thirds (⅔) of all the members elected to the Senate concur therein and after the judge shall have been served with a Statement of the alleged cause, and shall have an opportunity to be heard. Article 6, section 23 (b) and (c).

46. Since the present Governor has selected all the Appellate level judges and since his administration and his judicial associations are layered in cronyism, corruption and criminality, both on and off the bench, witness Defendant Sol Wachtler and Anthony P. LoRusso (AP 152-154), there is as a practical matter, whether de jure or de facto, no separation of the judiciary and executive branches of government in the State of New York, in stark contradiction to the most fundamental premise of the separation of powers. That is the detrimental effect and political consequence of not having a limit on the number of terms that a Governor can occupy that office.

47. The federal government must therefore now intervene because there is clear indication that there is a functional defect in the administration of justice as is classically the case in this seven-year-long civilian and civil rights war fomenting in the liberal north.

48. The Writ should issue to direct that the United States District Judge from another District within the Second Circuit direct that a special prosecutor be appointed to prepare a Statement of the alleged cause, and to prefer articles of

impeachment against the various judges of the State and Federal judiciary system.

CONCLUSION

For all the foregoing reasons the Writ should issue.

Dated: April 15, 1993
Alden, N.Y.

Daniel R. Hodge, M.D., J.D.
Erie County Correctional Facility
Box X C-108, Alden, N.Y. 14004

United States District Court
Rodney C. Early, Clerk of the Court
304 U.S. Courthouse
68 Court Street
Buffalo, N. Y. 14202
(716) 846-4211

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL R. HODGE, M.D., J.D.,
Plaintiff,

92-CV-835 A

vs.

MONICA APPLEWHITE, M.D.;
PAUL K. ISAAC, ESQ.;
RICHARD BERNHARD, ESQ.;
ERIE COUNTY FAMILY COURT JUDGES:
HON. JAMES H. DILLON,
HON. SHARON S. TOWNSEND,
HON. MARJORIE C. MIX,
HON. ANTHONY P. LORUSSO,
HON. JOHN F. O'DONNELL,
UNITED STATED[sic] DISTRICT COURT JUDGE:
HON. JOHN T. ELFVIN; CHIEF JUDGE OF
NEW YORK COURT OF APPEALS, Retired
HON. SOL WACHTLER,
Defendants.

REPORT and
RECOMMENDATION

This case was referred to me by the Hon. Richard J. Arcara to hear and report in accordance with 28 U.S.C. § 636 (b)(1)(B). Presently before me are the defendants motions to dismiss the complaint.

BACKGROUND

This complaint stems from a longstanding domestic dispute between the plaintiff, Daniel R. Hodge, and his ex-wife, defendant Monica J. Applewhite. At various times Dr. Applewhite was represented by defendants Richard Bernhard, Esq., and Paul Isaac, Esq.

In November of 1992 Erie County Family Court found the plaintiff Dr. Hodge in contempt for failing to pay child support pursuant to an upward modification that Dr. Hodge was to pay over to Dr. Applewhite. Dr. Hodge adamantly refused to make any effort to meet this new demand, and he apparently had been in arrears over his earlier support obligations. The Erie County Family Court granted him some time to fulfill those obligations, but threatened to incarcerate him should he fail to obey the order of the court.[1] Dr. Hodge appealed the upward modification to the Appellate Division, Fourth Department. That court has not yet issued a decision.

In events not directly related to the Family Court proceedings or the domestic disputes between Drs. Hodge and Applewhite, the State of New York suspended Dr. Hodge's license to practice medicine, and imposed conditions of probation with which he was to comply.

Plaintiff has filed two previous actions attempting to remove to this court some or all of the litigation before the Erie County Family Court. Defendant Hon. John T. Elfvin remanded this first attempt by order dated August 29, 1991 in case 91-CV-370 E. The Hon Richard J. Arcara did the same in case 93-CV-794 A. Both judges based their decision on Dr. Hodge's failure to remove the proceeding within thirty days of the filing of an action, as required by 28 U.S.C. § 1441. Dr. Hodge appealed Judge Elfvin's decision, but the Court of Appeals for the Second Circuit dismissed the action on December 12, 1991 for failure to comply with its Civil Appeals Management Plan.

THIS ACTION

In this action plaintiff asserts eight separate causes of action:

1. The modification of support by the Erie County Family Court was in violation of the Family Support Act of 1988, incorporated throughout Title 42 of the U.S. Code. He names as

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[1] This matter was argued before me on the morning of January 28, 1993. That afternoon, Dr. Hodge was incarcerated for civil contempt because he failed to obey the order of support. To this court's knowledge, Dr. Hodge is presently serving a four month term.

defendants the Hons. James H. Dillon, Sharon Townsend, Marjorie Mix, Anthony LoRussoo and John F. O'Donnell, all presently Erie County Family Court Judges.[2]

2. A request that this court declare his rights to the distribution of marital property. He names Monica Applewhite as defendant.

3. A request that this court declare his rights to visitation to his two children by defendant Monica Applewhite. He names Ms. Applewhite and each Erie County Family Court judge as defendants.

4. A request that this court declare that the suspension of his license to practice medicine and imposition of conditions of probation violated the eighth, thirteenth and fourteenth amendments. He names Sol Wachtler as defendant.

5. That the judicial officers of the Erie County Family Court violated his civil rights. He names each of the above-captioned Erie County Family Court judicial officers as defendants.

6. That defendant Hon. James J. Dillon violated various sections of the United States Criminal Code, 18 U.S.C. §§ 1 et seq.

7. That defendants Monica Applewhite, M.D., Paul Isaac, Esq., Richard Bernhard, Esq., and Hons. Sharon S. Townsend, Marjorie Mix and Anthony LoRusso violated various sections of the United States Criminal Code, 18 U.S.C. §§ 1 et seq.

8. That defendant Hon. John T. Elfvin violated various sections of the United States Criminal Code, 18 U.S.C. §§ 1 et seq.

In response, each defendant asks this court to dismiss the action for a variety of reasons. First, all defendants allege that Dr. Hodge's complaint violates Fed. Rule of Civ. Proc. 8 (e) in that it does not contain a short and plain statement of the facts showing that the plaintiff is entitled to relief. Defendants

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[2] During some of the time in issue, Judge Mix was a Family Court Hearing Officer.

Applewhite and Isaac assert that the complaint is frivolous. Defendant Bernhard asserts that the complaint fails to state a claim cognizable in federal court. The Family Court defendants allege that the complaint is nothing more than an attempt to appeal the decision of the Family Court, which cannot be done in federal court. Defendant Elfvin argues that he is entitled to absolute judicial immunity and that this court lacks juridiction to hear this claim. Finally, defendant Wachtler asserts that there is no federal jurisdiction and that the complaint fails to state a claim upon which relief can be granted.

DISCUSSION

The court has waded through Dr. Hodge's original complaint in this action.[3] It is by no means a "simple, concise, and direct" statement of any of the causes of action or underlying facts.

At base, Dr. Hodge complains about the actions of the Erie County Family Court in adjudicating the dispute between him and defendant Applewhite. In addressing that controversy, the Erie County Family Court has consistently applied the laws of New York State, and only the laws of New York State.

The first thee causes of action that Dr. Hodge asserts ask this court to declare his rights regarding child support, the distribution of marital property, and visitation. The Erie County Family Court has already issued orders regarding each of these contentions, and presently there is an appeal pending before the Appellate Division, Fourth Department. Defendants Dillon, Townsend, Mix, LoRusso and O'Donnell argue that Dr. Hodge is simply attempting to appeal the Family Court's judgment to this court. This court agrees. Dr. Hodge, in between irrelevant accusations and pontifications, attacks the Erie County Family Court's application of New York State domestic relations law and basically asks this court to apply his interpretation.

But Federal District Courts do not sit to hear appeals from state courts. The United States Supreme Court is the only federal forum to hear appeals from the final judgments of state courts. See 28 U.S.C. § 1257: ("Final judgments or decrees rendered by the highest court of a State in which a decision court be had, may be reviewed by the Supreme Court.); see also District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983): ("The District of Columbia Circuit properly acknowledge that the United States District Court is without authority to review final determinations of the (state court)").

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[3] In setting out eight separate alleged causes of action, plaintiff has submitted a complaint totaling 128 pages and 324 paragraphs.

Moreover, even if the judgment of the state courts was final, this court would not have subject matter jurisdiction over the corpus of the dispute. Thus:

> A century ago, however, the Supreme Court, sagely circumscribed the jurisdiction of federal courts as regards domestic relations when it held that "the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States".

Neustein v. Orbach, 732 F.Supp. 333, 339 (E.D.N.Y. 1990), quoting Ex Parte Burrus, 136 U.S. 586 (1890). This court has absolutely no jurisdiction to adjudicate Dr. Hodge's complaints regarding child visitation, marital property or child support.

In attempting to remove this action from Erie County Family Court, plaintiff requires an independent basis for federal jurisdiction. 28 U.S.C. § 1441 provides that, "any civil action of which the district courts have original jurisdiction, may be removed by the defendant ..." Dr. Hodge's basis for original jurisdiction in this court appears to be the **Family Support Act of 1988, P. L. 100-485**, incorporated throughout 42 U.S.C. Dr. Hodge argues that the Act requires the States to establish guidelines for child support. And he argues, because the Erie County Family Court misapplied New York law in modifying his support upward, this court should now make an independent determination of his child support obligations.

This is utterly specious. As noted above, this court has no jurisdiction to entertain suits addressing domestic relations. There is nothing in the **Family Support Act** to change that jurisdictional limitation. The actions of which Dr. Hodge complains are the state court's application of state law. A federal court does not sit to tell state courts that they misapplied state law.

The plaintiff's fourth cause of action appears to challenge New York State's suspension of his medical license and imposition of conditions of probation on allowing him to practice medicine in the future. He names only defendant Sol Wachtler, formerly Chief Judge of the New York Court of Appeals. Apparently Wachtler sat on the court that denied his petition for writ of certiorari, 78 N.Y. 2d 850 (1991), seeking review of the Appellate Division, Third Department affirmance, 72 A.D. 2d 891 (1991), of the New York State Board of Education's suspension of his medical license and imposition of probationary conditions. The United States Supreme Court has already denied certiorari. ______ U.S. _____, 112 S.Ct. 408 (1991).

The plaintiff's claims against Wachtler amount to no more than a series of conclusory allegations, bordering on the fanciful, that Wachtler, in his capacity as Chief Judge violated Dr. Hodge's Eighth, Thirteenth and Fourteenth Amendment rights. That portion of Dr. Hodge's complaint is little more than an anti-semitic diatribe directed at Wachtler and vituperation based on his well-publicized difficulties. Wachtler, acting in his judicial capacity, enjoys absolute immunity from any damage award. See Pulliam v. Allen, 466 U.S. 522, 541-42 (1984). And, as defendant Wachtler no longer sits on the New York Court of Appeals, this court cannot issue any equitable relief against him in his official capacity. Thus, plaintiff cannot state any facts providing a basis for relief against Wachtler. Dismissal is appropriate pursuant to Fed. Rule of Civ. Proc. 12 (b)(6).

The plaintiff's fifth cause of action alleges that the defendants Erie County Family Court Judges violated his civil rights. The time frame or nature of these violations is unclear from the face of the complaint. It appears that because the Family Court issued a series of rulings adverse to Dr. Hodge, a black male, his civil rights were thus violated. Thus, Dr. Hodge complaint is simply that he lost. The alleged facts giving rise to this cause of action are not facts at all. They consist merely of accusatory statements of racism and conspiracy flowing from the fact that he lost the state court litigation. This is not the basis of a civil rights claim. In short, it is beyond doubt that the plaintiff can prove no set of facts upon which this court could grant relief. See Citibank, N.A. v. K-H Corp., 968 F.2d 1489, 1494 (2nd Cir. 1992). Dismissal is appropriate under Fed. Rule of Civ. Proc. 12 (b)(6).

Even were there some marginally colorable claims, this court would have to abstain under Younger v. Harris, 401 U.S. 37 (1971). Originally fashioned to allow state courts to proceed with criminal proceedings, the Supreme Court extended this to civil proceedings as well. See Ohio Civil Rights Commission v. Dayton Christian Schools, 477 U.S. 619 (1986). The Second Circuit utilizes a three-part test to determine if abstention is appropriate: 1) whether a state civil proceeding is pending at the time the federal litigation is commenced; 2) the magnitude of the state's interests in that proceeding; and 3) whether the federal plaintiff had the opportunity to litigate the federal issues in state court. Christ the King Regional High School v. Culvert, 815 F. 2d 219 (2nd Cir.), cert, denied, 484 U.S. 830 (1987).

Here, there was a state civil proceeding pending at the time of the commencement of this action. Second, the state's interest in that proceeding is great. As noted above, federal courts do not involve themselves in matters of domestic relations. The State has a great interest in that proceeding, and indeed is the only forum to assert or vindicate those rights. Finally, there are absolutely no concrete facts in the plaintiff's meandering complaint that plaintiff did not have ample opportunity to assert any federal claims in state court. See Moore v. Sims, 442 U.S. 415, 430 (1979).

The plaintiff's final three causes of action ask this court to institute criminal proceedings against all of the defendants named in the action. The allegations are utterly baseless and border on the libelous. This court refuses to take any action to commence criminal proceedings against any of the defendants.

At argument Dr. Hodge seemingly complained of defendant Elfvin's earlier refusal to allow removal of an action in 1991. Any denial of removal pursuant to 28 U.S.C. § 1441 (a) is reviewable in very limited circumstances, and then only the Circuit

Court of Appeals. Dr. Hodge failed to comply with the rules of the Second Circuit Court of Appeals in seeking review of Judge Elfvin's order. This court has no jurisdiction to revisit that claim. Moreover, Judge Elfvin is entitled to absolute immunity from any suit seeking damages. See Puliam v. Allen, supra. Injunctive relief would be improper in any event since Dr. Hodge has failed to allege the essential facts entitling him to injunctive relief. See Fields v. Soloff, 920 F.2d 1114, 1120 (2nd Cir. 1990).

In addition to the original petition in this action, Dr. Hodge filed another pleading titled "Supplemental Verified Petition for Removal of a Civil Proceeding from the New York State Courts...," entered under Docket Entry 13. As explained at oral argument, I will not consider it at this time as it appears to be nothing more than a challenge to Judge Arcara's earlier remand of Case No. 92-CV-794 to the state court.

CONCLUSION

For all of the foregoing reasons, I recommend that the plaintiff's complaint be dismissed against all defendants.

Respectfully submitted,

Edmund F. Maxwell
United States Magistrate Judge

DATED: Buffalo, New York
March 29, 1993

Pursuant to 28 U.S.C. § 636(b) (1), it is hereby

ORDERED that this Report and Recommendation be filed with the Clerk of this Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the clerk of the court within (10) days of receipt of this Report and Recommendation in accordance with the above statute, Rule 72 (b) Fed.R.Civ.P. and Local Rule 30.

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. Thomas v. Arn, 474 U.S. 140, 106 S.Ct.

466, 88 L. Ed. 2d 435 (1985); Wesolek, et al v. Canadair Limited, et al, 838 F.2d 55 (2nd Cir. 1988).

Let the Clerk send a copy of this order and a copy of the Report and Recommendation to the attorneys for the plaintiff and the defendant.

So Ordered.

Edmund F. Maxwell
United States Magistrate Judge

DATED: Buffalo, New York
March 29, 1993

Supreme Court : Appellate Division
Third Judicial Department

Decided and Entered: March 4, 1993 66505

In the matter of
BARBARA J. CHARIFF..

Appellant,

-vs-

MEMORANDUM AND ORDER

CLIFFORD H. CARL,

Respondent.

Calendar Date: January 19, 1993
Before: Weiss, P.J., Levine, Mercure, Mahoney and Harvey, JJ.

Marya C. Young, Binghamton, for appellant.
Rodney C. Richards, Binghamton, for respondent.

Weiss, P.J.

Appeal from an order of the Family Court of Broome County (Kepner Jr., J.), entered March 30, 1992, which dismissed petitioner's application, in a proceeding pursuant to Family Court Act article 4, to modify a previous order of child support.

The parties, divorced in 1981, have two children which were subject of a 1983 Family Court order of support. That order provided for payment by respondent of $75 per week, together with provision for medical, dental and prescription expenses. That determination was based in part upon a finding that respondent's total income in 1982 was less that $4,000.

By petition dated August 13, 1990, respondent sought downward modification of his child support obligation because Wendy, his oldest daughter, reached the age of 21. Petitioner cross-petitioned for an upward modification, alleging that respondent's current income exceeded $150,000 and that the cost of care for Julie, the younger child, had increased significantly in the eights years following the earlier order and was expected to increase further. Family Court granted respondent's petition, but failed to make any determination of the amount of support to be paid for Julie and dismissed petitioner's cross-petition, finding that she had submitted only evidence of respondent's increased income but failed to show Julie's current needs or other change in circumstances. Petitioner appeals from the dismissal of her petition. Petitioner contends that the dramatic increase in respondent's income alone is indeed sufficient for a modification of child support. She further contends that the granting of relief to respondent for a downward modification requires application of the Child Support Standards Act (see, Family Court Act § 413).

State law provides for child support based upon the reasonable needs of the child and the means of the parents (see, Family Court Act § 413; see also, Matter of Commissioner of Social Services [Wandell vs. Segarra, 78 N.Y. 2d 220, 226). Child support is not a one-sided obligation placed upon a single parent, but rather an evaluation of the means and responsibilities of both parents and the needs and best interest of the child (see, Tessler vs. Siegel, 59 A.D. 2d 846, 847). A substantial improvement in the noncustodial parent's income and financial condition is, in and of itself, an independent ground sufficient to sustain an increase in the amount of child support that such parent is required to pay (see, Eisen vs Eisen, 48 A.D. 2d 652, 653; Matter of Delli Veneri vs. Delli Veneri, 40 A.D. 2d 735; Matter of Handel vs. Handel, 32 A.D. 2d 946, 947, aff'd, 26 N.Y. 2d 853; see also, Matter of McFarlane vs. McFarlane, 182 A.D. 2d 1024, 1025; Matter of Swerloff vs. Weintraub, 26 A.D. 2d 826). Here the Respondent has acknowledged more than a six-fold increase in his income and the record reveals that he possesses substantial holdings and may have income even in excess of that discernible from his disclosure. Accordingly, the order must be reversed and the matter remitted to Family Court for further proceedings not inconsistent with this decision.

Levine, Mercure, Mahoney and Harvey, JJ., concur.

ORDERED that the order is reversed, on the law, with costs, and matter remitted to the Family Court of Broome County for further proceedings not inconsistent with this court's decision.

ENTER:

Michael J. Novack
Clerk

United States District Court
WESTERN DISTRICT OF NEW YORK

DANIEL R. HODGE, M.D., J.D.,
Plaintiff,

REFERRAL ORDER
92-CV-835 A

-vs-

MONICA J. APPLEWHITE, M.D.,
PAUL K. ISAAC, ESQ.,
RICHARD BERNHARD, ESQ., et al.,
Defendants.

Hon. Edmund F. Maxwell, United States Magistrate Judge, is hereby designated to act in this case as follows.

Pursuant to 28 U.S.C. § 636 (b)(1)(A) and (B), all pre-trial matters in this case are referred to the above-named United States Magistrate Judge, including but not limited to:

(1) conduct of a scheduling conference and entry of a scheduling order pursuant to Fed. R. Civ. P. 16,
(2) hearing and disposition of all non-dispositive motions or applications,
(3) supervision of discovery, and
(4) supervision of all procedural matters involving the aforementioned or involving the preparation of the case or any matter therein for consideration by the District Judge.

The Magistrate Judge shall also hear and report upon dispositive motions for the consideration of the District Judge pursuant to 28 U.S.C. § 636 (b)(1)(B) and (C).

All motions or applications shall be filed with the Clerk and made returnable before the Magistrate Judge.

The parties are encouraged to consider the provisions of 28 U.S.C. § 636 (c) governing consent to complete disposition of the case, including trial if necessary, by the Magistrate Judge. Instructions and forms for use under those provisions are available from the office of the Magistrate Judge or of the Clerk.

IT IS SO ORDERED.

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: December 30, 1992

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Monica J. Applewhite
Petitioner,
vs.
Docket No. F-4148-89
Docket No. F-1148-91
Daniel R. Hodge,
Respondent.

DECISION AND ORDER
92-CV-794 A

Daniel R. Hodge,
Petitioner,
vs.
Docket No. F-4414-89
Docket No. F-1634-92
Monica J. Applewhite,
Respondent.

Daniel R. Hodge, proceeding pro se, filed a "Verified Petition" on November 30, 1992, removing this case to Federal District Court from New York State Family Court pursuant to 28 U.S.C. § 1441, 1443 and 1446 (e). Because Mr. Hodge failed to timely remove pursuant to 28 U.S.C. § 1446 (b), the Court sua sponte remands the case to state court.

Section 1446 (b) provides in pertinent part that:

> [t]he notice of removal of a civil action ... shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial

> pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

Mr. Hodge asserts in his petition for removal that he is "the Defendant in a three-year-long Support Proceeding...." Item No. 1, ¶ 1. This removal notice, filed in this Court at least three years after the commencement of the state court proceeding, is clearly untimely.

A motion to remand a case on the basis of any defect in removal procedure must be made within thirty days after the filing of the notice of removal. 28 U.S.C. § 1447 (c). A court has authority within that thirty-day period to sua sponte remand a case where such defect exists. See Maniar v. Federal Deposit Ins. Corp., No. 90-16252, 1992 U.S. App. LEXIS 29930, *6-7 (9th Cir. Nov. 16, 1992). Mr. Hodge's petition for removal having been filed on November 30, 1992, and the Court having found that the removal procedure was defective in that it was untimely, the Court sua sponte orders the action remanded to state court.[1]

Accordingly, it is HEREBY ORDERED that the action is remanded to state court. No further proceedings shall be had in this forum.

IT IS SO ORDERED.

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: December 24, 1992

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[1] The Court notes that Mr. Hodge's petition actually attempts to remove four separate Family Court actions--two in which Mr. Hodge is the named defendant/respondent, and two in which he is the plaintiff/petitioner. As to the latter two actions, removal is improper because only a defendant can remove an action to federal court. 28 U.S.C. § 1441.

Further, the Court expressly declines to address the merits of its jurisdiction over this action.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARYLOU WEPPNER,
Plaintiff,
CIV-86-194 T
vs.

EDWIN MEESE III, as Attorney General
of the United States,
Defendant.

Plaintiff Marylou Weppner has moved this Court to recuse itself and to reassign this case to a District Judge outside of the Second Circuit. Defendant Edwin Meese, III, opposes the motion as untimely and as failing to provide a factual basis for a charge of impartiality by the Court. I conclude that recusal is proper, but see no reason to order that the case be assigned to a District Judge outside of the Second Circuit.

Plaintiff commenced the underlying action based on allegations of sex discrimination and retaliatory discharge arising from her employment with the Department of Justice. Plaintiff was employed with the Department of Justice from August 6, 1973 through June 1, 1979 as a Schedule C Secretary and Confidential Assistant to former United States Attorney for the Western District of New York, Richard J. Arcara ("Arcara"). Plaintiff alleges that Arcara discriminated against her on the basis of her sex and discharged her in retaliation for filing charges with the Equal Employment Opportunity Commission. As a result, it is clear that Arcara will most likely be a primary witness at the trial of this action.

Richard Arcara has been nominated by the President, and approved by the United States Senate, as a United States District Judge for the Western District of New York. Due to Arcara's impending status, plaintiff maintains that recusal is appropriate under U.S.C. § 455 (a) which provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." This section creates "an objective, standard for recusal, creating the so-called 'appearance of justice' rule." In Re: International Business Machines Corp., 618 F. 2d 923, 929 (2d Cir. 1980).

I agree with plaintiff that a trial before one of the District Judges in the Western District of New York featuring Judge Arcara as one of the primary witnesses may well create an appearance of impropriety. "([J]udges commonly disqualify themselves when a fellow judge in their district is a party to a legal proceeding." United States v. Singer, 575 F. Supp. 63, 68 (D. Minn. 1983) (motion to recuse granted where evidentiary ruling involved testimony by Chief Judge of district and Chief Judge might be subpoenaed as a witness).

However, I am satisfied that a district judge outside of the Western District of New York but within the Second Circuit could preside over this case without any appearance of partiality.

WHEREFORE, the motion of plaintiff Marylou Weppner for recusal pursuant to 28 U.S.C. § 544 [sic] (a) is granted. The matter is referred to the Honorable John T. Curtin, Chief Judge, Western District of New York, for appropriate action in accordance with this decision and order.

SO ORDERED.

Michael A. Telesca
United States District Judge

DATED: Rochester, New York,
March 4, 1988.

STATES OF NEW YORK
SUPREME COURT : ERIE COUNTY

DANIEL R. HODGE,
Plaintiff-Respondent,
vs
MONICA J. HODGE,
Defendant-Petitioner.

AFFIDAVIT
(In pertinent part)

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

MONICA J. HODGE, being duly sworn, deposes and says:

1. I am the defendant-petitioner in the above-entitiled action.

2. This affidavit is being made in support of my application to vacate that portion of the Judgment of Divorce granted by Special Referee, Murray Marrocco, on February 9, 1984 in Supreme Court of the State of New York, County of Kings, dealing with the ancillary relief including support, maintenance and distribution of property based on CPLR § 5015 (a)(3), i.e., "Fraud, Misrepresentation or Other Misconduct of an Adverse Party," as more fully stated hereinbelow and in the Order to Show Cause. In addition, this affidavit is made in support of my application for temporary maintenance, child support and attorney's fees.

3. The judgment, attached hereto as Exhibit A, was taken by default against your deponent without this deponent's knowledge.

4. This deponent married the plaintiff on April 15, 1979 in the County of Kings, Borough of Brooklyn, City and State of New York. Matrimonial difficulties ensued and on December 17, 1980, a Separation Agreement was entered into by both parties. At the time of the execution of that Separation

Agreement, there was one (1) issue of the marriage, to wit, D1 HODGE, born April 24, 1980. After the Separation Agreement was executed, I reconciled with the plaintiff-respondent and, in fact, another issue was born of the marriage, to wit, D2 HODGE, born January 5, 1984. There is no mention of D2 HODGE in the Separation Agreement as , at the time of that execution, he was not yet born.

5. I deemed the Separation Agreement to be void since we had reconciled and, in fact, had another child. In March of 1984, I received a Judgment of Divorce in the mail, a copy of which is annexed as Exhibit A. At that time, I spoke to plaintiff-respondent and expressed dismay that a divorce had been granted against me.

6. The plaintiff-respondent advised me that he had fathered two (2) children with another woman. He wished to marry this woman in order for the children to be legally considered his and therefore he had sought the divorce. He advised me that the divorce itself was false and did not mean anything. After he was married to this other woman for approximately two (2) years, he would divorce her and remarry me.

7. He further advised that he had no intention of ever complying with the Separation Agreement but would, in fact, be much more generous. He continued to make all payments and, in fact, was paying more than Two Thousand Dollars ($2,000.00) per month. He, at all times, recognized our latest born child as being his son. We traveled together and went to Hawaii in February of 1985, California in June 1985 and August of 1986, St Martin in April of 1985 and Barbados in June of 1986.

8. In no way did either of us treat the divorce as being valid.

Monica J. Hodge

Subscribed and sworn to before
me this 5th day of January, 1987

BETH L. HOFFMAN
Notary Public, State of New York

United States District Court

WESTERN DISTRICT OF NEW YORK

Daniel R. Hodge, M.D., J.D.,

Plaintiff,

U. S. Department of Justice
(White-Collar Crime Unit),

Co-Plaintiff,

vs.

Monica J. Applewhite, M.D.,
Paul K. Isaac, Esq.,
Richard Bernhard, Esq.,
F.C.J. James H. Dillon,
F.C.J. Sharon S. Townsend,
F.C.J. Marjorie C. Mix,
F.C.J. Anthony P. LoRusso,
F.C.J. John F. O'Donnell,
F.D.C.J., John T. Elfvin,
CtApp.Ex-ChfJ, Sol Wachtler,

Defendants,

all acting individually, jointly, sequentially, collusively, with a common objective, under a common doctrine of white supremacy, in their official and individual capacities, in violation of the Thirteenth Amendment of the United States Constitution.

Verified Civil Suit In Equity Complaint Arising Under 28 U.S.C. §§ 1331, 1343 (a) (1) (2) (3) (4), 1441, 1443, 2201, 2202, 1738, 1861, 1862, 1863, And Under The U.S. Constitution And 42 U.S.C. §§ 1981, 1983, 1985 & 1986, And For An Evidentiary Hearing In The Prosecution Of Civil Rights Crimes Pursuant To 18 U.S.C. §§ 2, 3, 4, 241, 242, 245, 371, 876, 1001, 1018, 1341, 1513, 1514, 1581, 1583, 1584, 1621, 1622.

Case No.
92 - CV - 0835 A

As And For A First Claim For Relief Pursuant To 28 U.S.C. §§ 2201, 2202 For The District Court To Declare That The Order of Support Dated July 20, 1988, And Denied Modification On December 18, 1989, And On August 11, 1992, Is Ab Initio, From September 1, 1989, Entirely Inappropriate, Unjust & Unlawful, Pursuant To The Federal 1988 Family Support Act, P. L. No. 100-485, Since The Order of Support Does Not Conform To Plaintiff's Actual Financial, Professional, Personal And Social Circumstances.

As And For A Second Claim For Relief Pursuant To 28 U.S.C. § 2201, 2202, N.Y.S.D.R.L. § 236, Pt. B (1)(c), (5)(d)(6) For The Court To Declare The Rights Of The Plaintiff As Pertain To A Distributive Award Of Marital Property In The Medical License Of Defendant Monica J. Applewhite, M.D., For Disposition In A Final Judgment.

As And For A Third Claim For Relief Pursuant To 28 U.S.C. §§ 2201, 2202 For The Court To Declare The Rights Of The Plaintiff To Visitation With His Children, And For A Judgment Against Defendant Monica J. Applewhite, M.D., For Malicious Prosecution, And Judgments Against Her And Her Counsel Defendant Paul K. Isaac, Esq., For Libelous Defamation, Extreme Emotional Distress And Punitive Damages.

As And For A Fourth Claim For Relief Pursuant To 28 U.S.C. §§ 2201, 2202 For The Court To Declare - That The Order of Suspension Of Plaintiff's Medical License Dated May 4, 1990, In So Far As Probation Term # 1 f, Which Placed The Burden On The New York State, Office Of Professional Conduct Director To Select A Psychiatric Counselling Program For The Plaintiff, Even If Plaintiff Passes A Psychiatric Examination - Is An Ab Initio, Absolutely Unlawful, Atrociously Unjust, Villainously Inappropriate Order, Made In Violation Of The 8th, 13th And 14th Amendments of the Constitution of the United States of America.

As And For A Fifth Claim For Relief And Declaratory Judgment Regarding Plaintiff's Rights And Other Legal Relations As Evinced In Multiple Counts Of Civil Rights Violations Committed By Defendants Erie County Family Court Judges John F. O'Donnell, Anthony P. LoRusso, James H. Dillon, Marjorie C. Mix And Sharon S. Townsend, Pursuant To 28 U.S.C. § 1343, 42 U.S.C. § 1981, 1983, 1985, 1986.

As And For A Sixth Claim For Relief In Multiple Counts Of Civil Rights Crimes In Judicial Admissions And Proceedings Containing The Essential Facts Constituting Offenses Against The Laws Of The United States, Committed By Defendant Erie County Family Court Judge James H. Dillon And Defendant Paul K. Isaac, Esq., In Wanton Violation Of 18 U.S.C. §§ 2, 3, 241, 242, 245, 371, 876, 1001, 1018, 1341, 1513, 1514, 1581, 1583, 1584.

As And For A Seventh Claim For Relief In Multiple Counts Of Civil Rights Crimes In Judicial Admissions And Proceedings Containing The Essential Facts Constituting Offenses Against The Laws Of The United States, Committed By Defendants Erie County Family Court Judges Anthony P. LoRusso, Sharon S. Townsend, Hearing Examiner Marjorie C. Mix, Officers of the Court Richard Bernhard, Esq., and Paul K. Isaac, Esq., And Monica J. Applewhite, M.D., In Wanton Violation Of 18 U.S.C. §§ 2, 3, 4, 241, 242, 245, 371, 876, 1001, 1018, 1341, 1513, 1514, 1621 and 1622.

As And For A Eighth Claim For Relief In Multiple Counts Of Civil Rights Crimes In Judicial Admissions And Proceedings Containing The Essential Facts Constituting Offenses Against The Laws Of The United States, Committed By Defendant Federal District Court Judge John T. Elfvin And Ex-Chief Judge Of The State Of New York Court Of Appeals In Wanton Violation Of 18 U.S.C. §§ 2, 3, 4, 241, 242, 245, 371, 876, 1001, 1018, 1341, 1513, 1514, 1581, 1583, 1584.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

U.S. Constitution, Amendment I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for redress of grievances.

U.S. Constitution, Amendment IV provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

U.S. Constitution, Amendment VII:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

U.S. Constitution, Amendment VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted

U.S. Constitution, Amendment XIII:

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been convicted, shall exist within the United States, or any place subject to their jurisdiction.
2. Congress shall have power to enforce this article by appropriate legislation.

U.S. Constitution, Amendment XIV, section 1, provides: ... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution and laws, or treaties of the United States.

28 U.S.C. § 1343. Civil rights and elective franchise

(a) The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. § 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the division embracing the place where such action is pending.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

28 U.S.C. § 1443. Civil rights cases

Any of the following civil rights actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

28 U.S.C. § 1446. Procedure for Removal

(a) A Defendant or Defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the District Court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action or proceeding shall be filed within thirty (30) days after the receipt by the Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based, or within thirty (30) days after the service of summons upon the Defendant if such initial pleading has been filed in court and is not required to be served on the Defendant, which ever period is shorter.

If the case stated by the initial pleading is not removable, petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. (The second paragraph of the amendment to subsection (b) is intended to make clear that the right of removal may be exercised at a later stage of the case if the initial pleading does not state a removable case but its removability is subsequently disclosed. This is declaratory of the existing rule laid down by the decisions. See Powers vs. Chesapeake Ry. Co., 169 U.S. 92 (1898)

(e) Promptly after the filing of such petition for the removal of a civil action and bond the Defendant or Defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

28 U.S.C. § 1651. Writs

(a) The Supreme Court and all court established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

P. L. 100-485, 42 U.S.C. § 667 provides in pertinent parts that,

(a) Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b) (2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

Family Court Act § 413 (1)(a), in pertinent part, provides that,

"[t]he parents of a child under the age of twenty one (21) years are chargeable with support of such child and, if possessed of sufficient means or able to earn such means, shall be required to pay for child support a fair and reasonable sum as the court may determine.

Family Court Act (FCA) § 413 (1)(f), provides for the "criteria established by the State," pursuant to 42 U.S.C. § 667, and as are material to the **Verified Civil Suit in Equity Complaint,** are as follows:

Factor 1.	The financial resources of the custodial and non-custodial parent, and those of the child;
Factor 2.	The physical and emotional health of the child and his or her special needs and aptitudes;
Factor 4.	The tax consequences to the parties;
Factor 5.	The non-monetary contributions that the parents will make toward the care and well-being of the child;
Factor 6.	The educational needs of either parent;
Factor 7.	A determination that the gross income of one parent is substantially less than the other parent's gross income;

FCA § 413 (1)(b)(6), which provides: "Self-support reserve" shall mean one hundred and thirty five percent of the poverty income guidelines amount for a single person as reported by the federal department of health and human services. [For the calendar year 1989, for example, the self-support reserve was $8065.] On March first of each year, the self-support reserve shall be revised to reflect the annual updating or the poverty guidelines the federal department of health and human services for a single person household.

FCA § 413 (1)(d) which provides: Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be twenty-five dollars per month or the difference between the non-custodial parent's income and the self-support reserve, which ever is greater.

FCA § 413 (1)(j) In addition to financial disclosure required in section 236 of this article, the court may require that the income and/or expenses of either party be verified with documentation including, but not limited to, past and present income tax returns, employer statements, pay stubs, corporate, business, or partnership books and records, corporate and business tax returns, and receipts for expenses or such other means of verification as the court determines appropriate. Nothing herein shall affect any parties right to pursue discovery pursuant to this chapter, the civil practice law and rules, of the Family Court Act.

FCA § 424-a provides: In all support proceedings in family court, there shall be compulsory disclosure by both parties of their respective financial states, in accordance with the provisions of section two hundred thirty six of the domestic relations law; provided, however, that this requirement shall apply to a social services official who is a party in any support proceeding under this act.

Civil Practice Law and Rules (CPLR) § 3101 (a) provides: There shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

1. a party, or the officer, director, member, agent or employee of a party;
2. a person who possessed a cause of action or defense asserted in the action;

The Uniform Rule For The Family Court § 205.36 (a) (Findings of Fact), provides,

The hearing examiner shall make written findings of fact which shall include the income and expenses of each party, the basis for liability for support, and an assessment of the needs of the children.

New York State, Domestic Relations Law § 236, Pt. B (1)(c) and (5)(d)(6) provide for the as follows:

Definitions (1)(c) - The term "marital property" shall mean all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, regardless of the form in which title is held, except as otherwise provided in agreement pursuant to subdivision three of this part. Marital property shall not include separate property as hereinafter defined.

(5)(d)(6) - any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party

CLOSED

U.S. District Court
Western District of New York (Buffalo)
CIVIL DOCKET FOR CASE #: 92-CV-794

Applewhite v. Hodge
Filed: 11/30/92
Assigned to: Judge Richard J. Arcara
Jury demand: Both
Demand: $0,000
Nature of Suit: 440
Lead Docket: none
Jurisdiction: Federal Question
Dkt # in other court: None
Cause: 28:1441 Notice of Removal

MONICA J. APPLEWHITE
plaintiff
v.
DANIEL R. HODGE
defendant

Daniel R. Hodge
[COR LD NTC][PRO SE]
64 Marine Drive
Amherst, N.Y. 14228
(716) 691-3300

Proceedings include all events.

1:92cv794		Applewhite v. Hodge CLOSED
11/30/92	1	NOTICE OF REMOVAL; FILING FEE $ 120.00 RECEIPT # 43709 (Received Record of Family Court Proceedings Volumes I, II & III) (it) [Entry date 12/01/92] [Edit date 12/01/92]
12/1/91	--	Mailed Notice of Last Day to request Trial by Jury to all parties (it)
12/8/92	2	DEMAND for jury trial by Daniel R. Hodge (it) [12/10/92]
12/24/92	3	ORDER, Remanding this action to state court (signed by Judge Richard J. Arcara) Notice and copy of order sent to Daniel R. Hodge, Frank J. Boccio, Clerk, Erie County Family Court (it) [Entry date 12/29/92]
12/24/92	--	Case closed (it) [Entry date 12/29/92]
12/29/92	--	Letter to Clerk, Erie County Family Court with certified copy of remand order (it)
1/4/93	4	MOTION by Daniel R. Hodge to Vacate [3-1] order Remanding this action to state court (it)

1/21/93	5	CROSS MOTION by Daniel R. Hodge for Summary Judgment with Affidavit in Support (ret 1/28/93, 10:00) (it)
1/25/93	6	NOTICE OF SUPPLEMENTAL VERIFIED PETITION FOR REMOVAL of Civil Proceeding from New York State Court; (it) [Entry date 01/26/93]
1/27/93	7	Supplemental Notice of CROSS MOTION by Daniel R. Hodge for Preliminary Injunction (it) [Entry date 01/28/93]
1/27/93	8	AFFIDAVIT by Daniel R. Hodge in support of [7-1] cross motion for Preliminary Injunction (it) [Entry date 01/28/93]
1/27/93	9	CERTIFICATE OF SERVICE (Affidavit) by Daniel R. Hodge (it) [Entry date 01/28/93]
3/22/93	10	NOTICE of Application by Daniel R. Hodge (it)
4/6/93	11	MOTION by Daniel R. Hodge to Extend Time to 4/16/93 to file objections to Mag.'s Report & recommendation (it) [Entry date 04/07/93]
4/13/93	12	CERTIFICATE OF SERVICE by Daniel R. Hodge, 4/6/93 (it) [Entry date 04/14/93]
4/16/93	13	OBJECTION by Daniel R. Hodge to Mag. Maxwell's Report & Recommendation (it)
5/13/93	14	ORDER denying [4-1] motion to alter or amend (vacate) Court's motion to remand action to state court; affirming [3-1] order Remanding this action to state court, denying motion to consolidate this action with 92-CV-835; directing that clerk will no longer accept for filing in this case any documents that relate or refer to 92-CV-835 A, regardless of whether both docket numbers are listed, etc. (signed by Judge Richard J. Arcara) Notice and copy of order sent to Daniel R. Hodge (it) [Entry date 05/17/93]

U.S. District Court
Western District of New York (Buffalo)
CIVIL DOCKET FOR CASE #: 92-CV-835
Hodge v. Applewhite Filed: 12/18/92
Assigned to: Judge Richard J. Arcara Jury demand: Plaintiff
Demand: $0,000 Nature of Suit: 440
Lead Docket: none Jurisdiction: Federal Question
Dkt # in other court: None
Cause: 28:1331 Fed. Question: Civil Rights Violation

DANIEL R. HODGE plaintiff	Daniel R. Hodge [COR LD NTC][PRO SE] 64 Marine Drive Amherst, N.Y. 14228 (716) 691-3300
v.	
MONICA J. APPLEWHITE, M.D. defendant	Paul K. Isaac [COR LD NTC] 700 Cathedral Park Tower Buffalo, N.Y. 14202 (716) 842-6230
PAUL K. ISAAC, Esq. defendant	Paul K. Isaac (See above) [COR LD NTC]
RICHARD BERHARD, Esq. defendant	David Gerald Jay [COR LD NTC] 120 Delaware Avenue Suite 100 Buffalo, N.Y. 14202 (716) 856-6300
JAMES H. DILLON, Family Court Judge defendant	Peter B. Sullivan [COR LD NTC] Attorney General of the State of NY Assistant Attorney General 65 Court Street

	Buffalo, N.Y. 14202 (716) 847-7174
SHARON S. TOWNSEND, Family Court Judge defendant	Peter B. Sullivan (See above) [COR LD NTC]
MARJORIE C. MIX, Family Court Judge defendant	Peter B. Sullivan (See above) [COR LD NTC]
ANTHONY P. LORUSSO, Family Court Judge defendant	Peter B. Sullivan (See above) [COR LD NTC]
JOHN F. O'DONNELL, Family Court Judge defendant	Peter B. Sullivan (See above) [COR LD NTC]
JOHN T. ELFVIN, Fed. D. C. Judge defendant	Shirley Troutman [COR LD NTC] U.S. Attorney's Office 502 U.S. Court House 68 Court Street Buffalo, N.Y. 14202 (716) 846-4811 FTS 437-4811
SOL WACHTLER, CA Chief Judge, all acting individually, jointly, sequentially, collusively, with a common objective, under a common doctrine of white supremacy, in their official and individual capacities, in violation of the Thirteenth Amendment of the United States Constitution defendant	Peter B. Sullivan (See above) [COR LD NTC]

Proceedings include all events.

1:92cv835 Hodge v. Applewhite, et al

12/18/92	1	COMPLAINT filed; FILING FEE $120.00 RECEIPT # 43871 (it) [Entry date 12/22/92]
12/18/92	--	SUMMONS(ES) issued for Monica J. Applewhite, Paul K. Isaac, Richard Bernhard, James H. Dillon, Sharon S. Townsend, Marjorie C. Mix, Anthony P. Lorusso, John F. O'Donnell, John T. Elfvin, Sol Wachtler (it) [Entry date 12/22/92]
12/21/92	2	DEMAND for jury trial by Daniel R. Hodge (it) [Entry date 12/22/92]
12/21/92	3	ACKNOWLEDGMENT OF SERVICE as to Monica J. Applewhite, Paul K. Isaac, Richard Bernhard, James H. Dillon, Sharon S. Townsend, Marjorie C. Mix, Anthony P. Lorusso, John F. O'Donnell, John T. Elfvin, 12/18/92 Answer due on 1/7/93 for defendants (it) [Entry date 12/23/92]
12/28/92	4	MOTION by Richard Bernhard to Dismiss, to Strike [1-1] complaint (ret 1/28/93, 9:00) (it) [Entry date 12/29/92]
12/31/92	5	ORDER REFERRING CASE to Magistrate Judge Edmund F. Maxwell to conduct scheduling conference; hearing and disposition of all non-dispositive motions; supervision of discovery; Mag. shall also hear and report upon dispositive motions for consideration of the District Judge; (signed by Judge Richard J. Arcara) Notice and copy sent to David Gerald Jay, Daniel R. Hodge (it)
1/4/93	6	MOTION by Daniel R. Hodge to Consolidate Cases; to vacate Order Remanding to state court in 92-CV-794 (it)
1/7/93	7	MOTION by James H. Dillon, Sharon S. Townsend, Marjorie C. Mix, Anthony P. Lorusso, John F. O'Donnell to Dismiss (ret 1/28/93, 9:00) (it) [Entry date 01/08/93]
1/7/93	8	MEMORANDUM by James H. Dillon, Sharon S. Townsend, Marjorie C. Mix, Anthony P. Lorusso,

		John F. O'Donnell in support of [7-1] motion to Dismiss (it) [Entry date 01/08/93]
1/7/93	9	MOTION by Monica J. Applewhite, Paul K. Isaac to Dismiss (no ret) (it) [Entry date 01/08/93]
1/19/93	10	MOTION by Sol Wachtler to Dismiss (it) [Entry date 01/21/93]
1/21/93	11	CROSS MOTION by Daniel R. Hodge for Summary Judgment and Affidavit in Support (ret 1/28/93, 10:00) (it)
1/21/93	12	CERTIFICATE OF SERVICE by Daniel R. Hodge on 1/20/93 (it)
1/25/93	13	NOTICE OF SUPPLEMENTAL VERIFIED PETITION FOR REMOVAL of Civil Proceeding from New York State Court; (it) [Entry date 01/26/93]
1/25/93	14	CERTIFICATE OF SERVICE by Daniel R. Hodge (it) [Entry date 1/26/93]
1/26/93	18	NOTICE of Motion for an order dismissing pltf's complaint by John T. Elfvin (it) [Entry date 01/28/93]
1/26/93	19	MOTION by John T. Elfvin (no ret date) (it) [Entry date 01/28/93]
1/26/93	20	MEMORANDUM by John T. Elfvin in support of [19-1] motion to Dismiss (it) [Entry date 01/28/93]
1/26/93	21	RESPONDING AFFIDAVIT of Paul K. Isaac by Monica J. Applewhite, Paul K. Isaac in opposition to [11-1] cross motion for Summary Judgment (it) [Entry date 01/28/93]
1/27/93	15	SUPPLEMENTAL NOTICE OF CROSS MOTION by Daniel R. Hodge for Preliminary Injunction (fm) [Entry date 01/28/93]
1/27/93	16	AFFIDAVIT by Daniel R. Hodge in support of supplemental [15-1] cross motion for Preliminary Injunction (fm) [Entry date 01/28/93]
1/27/93	17	AFFIDAVIT of service by Walter L. Jones of cross mtn and supporting affidavit served 1/27/93. (fm) [Entry date 01/28/93]

1/28/93	--	Motion hearing re: [19-1], [10-1], [9-1], [7-1], [4-1] motions to Dismiss, [11-1] cross motion for Summary Judgment; decision reserved; (it) [Entry date 02/10/93]
2/4/93	22	RETURN OF SERVICE executed as to Sol Wachtler 1/19/93; first attempt mailed 12/30/92 (it) [Entry date 02/05/93]
2/17/93	23	MOTION by Daniel R. Hodge for Default Judgment against Paul K. Isaac, James H. Dillon (dn)
2/22/93	24	AFFIDAVIT by Monica J. Applewhite, Paul K. Isaac in opposition to [23-1] motion for Default Judgment against Paul K Isaac, James H. Dillon, [15-1] motion for Preliminary Injunction (fm) [Entry date 02/24/93]
2/26/93	25	TRANSCRIPT: Excerpt of proceedings before Mag/Judge Maxwell held 1/28/93. (fm) [Entry date 03/01/93]
3/22/93	26	NOTICE of Application by Daniel R. Hodge (it)
3/29/93	27	REPORT AND RECOMMENDATIONS of Magistrate Judge Edmund F. Maxwell that pltf's complaint by dismissed agnst all defts. Case no longer referred to Magistrate Judge Edmund F. Maxwell Objections to R and R due by 4/16/93 Notice and copy to Peter B. Sullivan, Shirley Troutman, David Gerald Jay, Paul K. Isaac, Daniel R. Hodge (it) [Entry date 03/30/93]
4/6/93	28	TRANSCRIPT of proceedings before Mag. Judge Maxwell on 1/28/93 (it)
4/6/93	29	MOTION by Daniel R. Hodge to Extend Time to 4/16/93 to file objections to Mag's Report and Recommendation (it) [Entry date 04/07/93]
4/9/93	30	ORDER granting [29-1] motion to Extend Time to 4/16/93 to file objections to R&R; (signed by Judge Richard J. Arcara) Notice and copy of order to Peter B. Sullivan, Shirley Troutman, David Gerald Jay, Paul K. Isaac, Daniel R. Hodge (it)

4/13/93	31	CERTIFICATE OF SERVICE by Daniel R. Hodge, 4/6/93 (it) [Entry date 04/14/93]
4/16/93	32	OBJECTION by Daniel R. Hodge to [27-1] report and recommendations (it)
4/22/93	33	AFFIDAVIT of Peter B. Sullivan by James H. Dillon, Sharon S. Townsend, Marjorie C. Mix, Anthony P. Lorusso, John F. O'Donnell, Sol Wachtler in response to [32-1] objection to Report and Recommendation (it) [Entry date 4/23/93]
5/13/93	34	MANDATE from Court of Appeals for Petition for WRIT of Mandamus returned executed - petition denied; copy of Mandate to Daniel R. Hodge (it) [Entry date 5/19/93]
5/27/93	35	ORDER, denying pltf's motion for disqualification; Dismissing Complaint with prejudice agnst all defts for reasons set forth in Mag. Maxwell's Report & Recommendation (signed by Judge Richard J. Arcara) Notice and copy of order sent to Peter B. Sullivan, Shirley Troutman, David Gerald Jay, Paul K. Isaac, Daniel R. Hodge (it) [Entry date 06/01/93]
6/1/93	36	JUDGMENT on decision of the Court (Clerk). Notice and copy of judgment sent to Peter B. Sullivan, Shirley Troutman, David Gerald Jay, Paul K. Isaac, Daniel R. Hodge (it)
6/1/93	--	Case closed (it)
6/22/93	37	NOTICE OF APPEAL by Daniel R. Hodge. Fee Status: Paid $105.00 Receipt $ 45390 (copy mailed to P. Sullivan, S. Troutman, D. Gerald Jay, P. Isaac, and to Clerk, USCA, with copy of docket entries) (dr) [Entry date 06/23/93]

Docket as of July 2, 1993 2:26 pm